

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF QWEST CORPORATION'S  
SECTION 271 APPLICATION AND MOTION  
FOR ALTERNATIVE PROCEDURE TO MANAGE  
THE SECTION 271 PROCESS

ORIGINAL

Utility Case No. 3269

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Exhibit Volume II

Staff track A – Exhibit 1, 1A & 1B

DATE TAKEN: January 22 & 23, 2002  
TAKEN BY: Patricia O'Brien, CSR  
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**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF U S WEST )  
COMMUNICATIONS, INC.'S SECTION )  
271 APPLICATION AND MOTION FOR ) UTILITY CASE NO. 3269  
ALTERNATIVE PROCEDURE TO )  
MANAGE THE SECTION 271 PROCESS )**

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**Testimony of Michael S. Ripperger  
in Response to Qwest's New Mexico  
Specific Tract A Evidence**

**December 31, 2001**

**PUBLIC VERSION, REDACTS CONFIDENTIAL MATERIAL SUBJECT TO  
THE TERMS OF THE PROTECTIVE ORDER AND HIGHLY CONFIDENTIAL  
MATERIAL SUBJECT TO THE TERMS OF THE SUPPLEMENTAL  
PROTECTIVE ORDER**

*Staff Tract A  
Exhibit 1*

1    **Q.     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2    A.     Michael S. Ripperger. My business address is the New Mexico Public Regulation  
3    Commission, 224 East Palace Ave., Santa Fe, NM 87501.

4

5    **Q.     WHAT IS YOUR POSITION WITH THE COMMISSION?**

6    A.     I am a Utility Economist.

7

8    **Q.     PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
9       **BACKGROUND.**

10   A.     I received a Bachelor of Science in Economics from Southern Connecticut State  
11   University in 1986. I received a Masters of Arts in Economics from the University of  
12   New Mexico in December of 1997. I became a member of the Commission Advocacy  
13   Staff in June, 1998. Since that time, I have provided economic analysis to the  
14   Commission in a broad range of cases involving electric, water, and sewer utilities as  
15   well as telecommunications providers.

16

17   **Q.     HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS**  
18       **COMMISSION?**

19   A.     Yes. Please refer to Appendix A.

20

21   **Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

1 A. My testimony responds to the Affidavit of John Badal filed by Qwest on October  
2 5, 2001 and the Direct Testimony of John Badal and the Supplemental Testimony of  
3 David Teitzel, filed by Qwest on November 16, 2001.

4  
5 **Q. WHAT IS "TRACK A"?**

6 A. In order to qualify for Section 271 approval, Qwest must demonstrate that it  
7 satisfies the requirements of either Section 271(c)(1)(A) or Section 271(c)(1)(B). Qwest  
8 contends that it satisfies the requirements of Section 271(c)(1)(A). Because Qwest has  
9 opted to proceed under Section 271(c)(1)(A), Qwest's Section 271 application is being  
10 treated as a "Track A" application.

11

12 **Q. WHAT DOES TRACK A REQUIRE?**

13 A. Section 271(c)(1)(A) provides:

14  
15 (A) PRESENCE OF A FACILITIES BASED COMPETITOR – A Bell  
16 operating company meets the requirements of this subparagraph if it has  
17 entered into one or more binding agreements that have been approved  
18 under section 252 specifying the terms and conditions under which the  
19 Bell operating company is providing access and interconnection to its  
20 network facilities for the network facilities of one or more unaffiliated  
21 competing providers of telephone exchange service (as defined in section  
22 3(47)(A), but excluding exchange access) to residential and business  
23 subscribers. For the purpose of this subparagraph, such telephone  
24 exchange service may be offered by such competing providers either  
25 exclusively over their own telephone exchange service facilities or  
26 predominantly over their own telephone exchange service facilities in  
27 combination with the resale of the telecommunications services of another  
28 carrier.

29  
30

1     **Q.     WHY IS THE TRACK A ANALYSIS IMPORTANT?**

2     A.     In a Memorandum Opinion and Order in a 1997 Section 271 case, the FCC gave a  
3     useful history of the Telecommunications Act generally and Section 271 specifically.

4     The case is In the Matter of the Application of Ameritech Michigan Pursuant to Section  
5     271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA  
6     Services In Michigan, Memorandum Opinion and Order, FCC 97-298, CC Docket No.

7     97-137 (Released August 19, 1997) (“Ameritech/Michigan Order”). In Paragraphs 10-23  
8     of the Ameritech Michigan Order the FCC summarized the history and purpose of

9     Section 271. As the FCC explains, prior to the passage of the Telecommunications Act  
10    of 1996, there was concern that if Bell Operating Companies were permitted to compete

11   in the interexchange market, they would have substantial incentives and opportunity,  
12   through their control over local exchange and exchange access facilities and services, to  
13   discriminate against their interexchange rivals and to cross-subsidize their interexchange  
14   ventures. As a result, for many years, local exchange markets functioned as natural  
15   monopolies and were even less subject to competition than the long distance market.

16   Both economic and operational barriers to entry discouraged or even precluded local  
17   exchange competition to a substantial degree. To encourage local competition, it was  
18   necessary for statutory, regulatory and economic barriers to be removed. The statutory  
19   and regulatory barriers were removed when the Telecommunications Act of 1996 (the  
20   “Act”) was enacted. Among many other things, the Act requires incumbent local

21   exchange carriers (“ILECs”), including Bell Operating Companies, to share their  
22   networks to enable competition, to offer non-discriminatory interconnection at cost-based  
23   rates and to make their retail services available at wholesale rates for resale by new

1 market entrants. A competitor's success in capturing local market share is dependent, to  
2 a significant degree, on the cooperation of the Bell Operating Company. However,  
3 because the Bell Operating Companies otherwise have very little incentive to cooperate  
4 with new local market entrants, the Act provides incentives. One important incentive  
5 provided by the Act is Section 271. Under Section 271 a Bell Operating Company must  
6 demonstrate that it has opened its local market to competition before it can be authorized  
7 to provide in-region long distance service. This creates a critically important incentive  
8 for Bell Operating Companies, like Qwest, to cooperate in introducing competition in  
9 their historically monopolized local markets.

10       It is important to remember that insisting on compliance with the requirements of  
11 Section 271 is not punitive. The requirements of Section 271 reflect the specific history  
12 in the development of the telecommunications markets in this country and they reflect the  
13 economic realities of what is necessary to open those markets. Compliance with all the  
14 requirements of Section 271 is a realistic and necessary goal for Qwest. As the FCC  
15 acknowledged, the goal of complying with all the requirements of Section 271 is not easy  
16 and is not achievable overnight. Even a company that is making a good faith effort may  
17 not necessarily complete the task.

18       The Track A analysis is at the very heart of this statutory scheme. Track A  
19 requires Qwest to show in real terms that its local market is open to competitors before it  
20 receives Section 271 approval and to show that it is cooperating with competitors in fact  
21 and not just in theory. If Qwest has started the process of opening its markets but has not  
22 completed the process, it is not punitive to recognize that fact. That is why the Track A  
23 analysis is important.

1

2   **Q.     WHAT IS THE STATUS OF QWEST'S CLAIMS THAT IT SATISFIES**  
3   **TRACK A IN NEW MEXICO?**

4   A.     The Commission, Staff, Qwest and various other parties have been participating  
5   in a multi-state proceeding, along with participants from six other states, for the purpose  
6   of developing a record on the non-OSS aspects of Qwest's Section 271 application for  
7   New Mexico. In its July 31, 2001 Order Regarding "Paper Workshop" Report, the  
8   Commission recognized that the "overarching goal of the multi-state proceeding is to  
9   develop, in conjunction with separate proceedings such as OSS testing and network  
10  element pricing, a full and complete record sufficient for the participating States to form  
11  appropriate respective recommendations to the FCC regarding Qwest's compliance with  
12  the requirements of Section 271 in each of the participating States." In this July 31, 2001  
13  Order, the Commission stated that the multi-state proceeding "roughly approximates" an  
14  administrative hearing process in a case pending before the Commission. Parties to the  
15  multi-state have had the opportunity to conduct discovery, pre-file sworn testimony,  
16  cross-examine witnesses, and to submit briefs and legal argument.

17         The non-OSS multi-state process was organized in a series of workshops, with  
18  each workshop addressing a discrete group of issues. Track A issues were addressed in  
19  the non-OSS multi-state process in a group of issues referred to as "Group 5". In  
20  addition to Track A issues, Group 5 included issues relating to SGAT general terms and  
21  conditions, the public interest standard and Section 272. The multi-state Track A filings  
22  and hearings frequently also address these other issues. Qwest filed the testimony of  
23  David Teitzel on Track A and Public Interest on March 30, 2001 and the rebuttal

1 testimony of the same witness on May 23, 2001. AT&T filed the Affidavit of Mary Jane  
2 Rasher on May 4, 2001. Multi-state Group 5 hearings were held in Denver between June  
3 4, 2001 and June 8, 2001 and between June 25, 2001 and June 29, 2001.

4 As the Commission noted in its July 31, 2001 Order, shortly after the conclusion  
5 of each multi-state workshop, the Facilitator, assisted by state advisory staff, submits a  
6 report to the Commission containing the Facilitator's analysis and recommendations.  
7 Qwest has argued from the beginning of this process that no new evidence should be  
8 permitted after the Facilitator issues his report. Other parties have argued that certain  
9 matters, like the performance Qwest is providing to specific CLECs in individual states,  
10 should be raised at the state after the conclusion of the multi-state. Qwest has resisted  
11 this argument, urging that all evidence should be presented at the multi-state and that  
12 parties should be prevented from presenting new evidence later in state-specific  
13 proceedings.

14 The Facilitator served his Group 5 Report, including his Track A  
15 recommendations on September 21, 2001. The Facilitator's Group 5 Report was filed in  
16 the record in this case. The Group 5 Report contains the Facilitator's Track A analysis at  
17 pages 71-85.

18 In analyzing the Track A evidence in the multi-state proceeding, the Facilitator  
19 used a four part analysis suggested by the FCC in its analysis of Ameritech's Section 271  
20 application for the state of Michigan. The Facilitator cites this case as Memorandum  
21 Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the  
22 Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services



1    in Michigan, 12 FCC Record 20543, 20577-99 (1977) (Ameritech Michigan Order)

2    Paragraphs 62-104. The four questions analyzed in this four part test are:

3            1)        Whether the BOC has signed one or more binding agreements that have  
4    been approved under section 252;

5            2)        Whether the BOC is providing access and interconnection to unaffiliated  
6    competing providers of telephone exchange service;

7            3)        Whether there are unaffiliated competing providers of telephone exchange  
8    service to residential and business customers; and

9            4)        Whether the unaffiliated competing providers offer telephone exchange  
10   service exclusively over their own telephone exchange service facilities or predominantly  
11   over their own telephone exchange service facilities in combination with the resale of the  
12   telecommunications services of another carrier.

13           At pages 73-74 of the Group 5 Report, the Facilitator concluded that Qwest had  
14   established that it has signed one or more binding interconnection agreements and that it  
15   is providing access and interconnection to unaffiliated competing providers. However,  
16   for New Mexico, the Facilitator found that Qwest had not established the next two  
17   elements of the four-part test. According to the facilitator, Qwest has not satisfied Track  
18   A for New Mexico.

19

20    **Q.        WHAT HAPPENED AFTER THE FACILITATOR CONCLUDED THAT**  
21    **QWEST HAD NOT SATISFIED TRACK A FOR NEW MEXICO?**

22    A.        It is a regular part of the multi-state process that the parties file comments and  
23    exceptions to the Facilitator's Reports 10 days after they are issued. Qwest filed 10-day

1 comments arguing that the Facilitator was wrong in his Track A conclusions for New  
2 Mexico. Specifically, Qwest argued that: 1) The FCC has stated that the Track A  
3 requirement to establish residential competition can be met solely through resale; and 2)  
4 It had produced undisputed evidence at the multi-state that five CLECs were serving  
5 3064 residential access lines via resale in New Mexico. But Qwest also filed new  
6 evidence in its 10-day comments, attaching the Affidavit of John Badal. In this Affidavit,  
7 Mr. Badal claimed that: 1) New E-911 database data shows that facilities-based wireline  
8 CLEC telephone number in service counts of 4,796 for residential and 19,144 for  
9 business in New Mexico; 2) The number of new housing permits suggests that the  
10 number of residences in New Mexico continues to grow while Qwest's residential access  
11 line base has decreased between December 2000 and July 31, 2001; 3) A total of 36  
12 CLECs have tariffs on file to provide local exchange service to residential customers; 4)  
13 Cricket has recently entered the New Mexico market and is "positioning" its PCS service  
14 as an alternative to traditional landline service; and 5) The FCC has concluded that the  
15 broadband PCS service offered by providers like Cricket qualifies as telephone exchange  
16 service for purposes of Track A.

17 Based on this new evidence, Qwest asked the Commission to reject the  
18 Facilitator's findings that Qwest had not satisfied the third or fourth parts of the four-part  
19 Track A test established by the FCC in the Ameritech/Michigan Order and to find that  
20 Qwest satisfies Track A in New Mexico. Staff and AT&T both made filings with the  
21 Commission arguing that the Affidavit of John Badal submitted by Qwest with its 10-day  
22 comments represented new state-specific evidence presented for the first time after the  
23 multi-state Track A proceeding. AT&T argued that the new evidence should be stricken.

1 Staff argued that Qwest's new evidence must be subjected to an evidentiary review here  
2 in New Mexico with adequate procedural opportunities including the opportunity for  
3 discovery, responsive testimony and cross-examination.

4 On October 24, 2001, Staff filed discovery requests seeking a copy of the Intrado  
5 Report referred to in the Affidavit of John Badal. On November 7, 2001 the Commission  
6 issued its Procedural Order Regarding Track A setting a hearing schedule for discovery,  
7 testimony and a hearing and appointing a Hearing Examiner for the New Mexico specific  
8 Track A component of this case.

9 On November 16, 2001, Qwest filed direct testimony of John Badal and the  
10 Supplemental Testimony of David Teitzel. The Direct Testimony of John Badal attached  
11 his earlier affidavit and amplified the statements he made earlier, adding detail about how  
12 Cricket is marketing its service in New Mexico. The Supplemental Testimony of David  
13 Teitzel described the evidence of resale-based competition that Mr. Teitzel provided in  
14 the multi-state and then provided new evidence of resale-based competition, revised  
15 downward significantly from the earlier number. Because of discovery problems, Staff  
16 sought and received extension of time to file this testimony.

17  
18 **Q. HOW SHOULD THE TRACK A ANALYSIS BE CONDUCTED?**  
19

20 A. Like the multi-state Facilitator, the Commission should refer to and implement the  
21 four-part test established by the FCC in the Ameritech/Michigan Order as well as other  
22 relevant FCC precedent that I will refer to in analyzing whether Qwest satisfies Track A  
23 in New Mexico. Because the multi-state Facilitator found that Qwest did satisfy the first  
24 two parts but did not satisfy the second two parts of the four-part test outlined in the  
25 Ameritech/Michigan Order, the Commission should focus on the second two parts of the

1 four-part test. Also, the Commission should focus on the specific claims made by Qwest  
2 in its newly filed New Mexico specific evidence and analyze whether this evidence  
3 stands up to scrutiny and whether it satisfies the Ameritech/Michigan test and other  
4 statutory and FCC requirements that I discuss in this testimony.

5  
6 **SATISFACTION OF TRACK A SOLELY THROUGH RESALE**

7  
8 **Q. PLEASE ADDRESS THE CLAIM MADE BY QWEST THAT THE FCC**  
9 **PERMITS SATISFACTION OF THE TRACK A REQUIREMENT TO**  
10 **ESTABLISH RESIDENTIAL COMPETITION SOLELY THROUGH RESALE**

11 A. Both in its 10-day comments and in the Supplemental Direct Testimony of David  
12 Teitzel filed on November 16, 2001, Qwest has claimed that: "Qwest can satisfy Track A  
13 by showing that business customers in New Mexico are being served by facilities-based  
14 competition while residential customers are being served solely by resale-based  
15 competition." This statement appears in Mr. Teitzel's testimony at page 3, lines 4-6. The  
16 two FCC cases he cites are Memorandum Opinion and Order, Application of Bell South  
17 et al. for Provision of In-Region InterLATA Services in Louisiana, 13, FCC Red 20599,  
18 FCC 98-271, CC Docket No. 98-121, Paragraph 48 (Rel. October 13, 1998) ("Second  
19 Bell South/ Louisiana Order") and Memorandum Opinion and Order, Joint Application  
20 by SBC Communications et al. For Provision of In-Region, InterLATA Services in  
21 Kansas and Oklahoma, 16, FCC Red 6237, FCC 01-29, CC Docket No. 00-217,  
22 Paragraph 43 (Rel. January 22, 2001) ("SBC/ Kansas Oklahoma Order"). I reviewed the  
23 Track A portions of these cases so I could respond to Mr. Teitzel's testimony.

1    **Q.     DID EITHER OF THESE CASES PERMIT THE APPLICANT TO**  
2    **SATSIFY TRACK A BY SHOWING OF RESALE-BASED RESIDENTIAL**  
3    **COMPETITION ALONE?**

4    A.     No. In the Second Bell South/Louisiana Order the FCC stated, in paragraph 48  
5    that, if all of the other requirements of Section 271 have been met, it does not appear to  
6    be consistent with congressional intent to exclude a BOC from the in-region, interLATA  
7    market solely because the competitors' service to residential customers is wholly through  
8    resale. But then, in the very next sentence in paragraph 48, the FCC went on to state that  
9    Bell South had not satisfied the competitive checklist and had not complied with section  
10   272, so the Bell South application did not present to the FCC the question of whether the  
11   residential component of Track A can be satisfied wholly through resale as long as all  
12   other requirements were met. The FCC ended its Track A discussion by stating that it  
13   therefore "did not conclude" whether Bell South had met Track A with its residential  
14   resale showing.

15         In the SBC/Kansas Oklahoma Order the FCC stated, in paragraph 42 that,  
16   although there was a lot of dispute in the record, it concluded that "a sufficient number of  
17   residential customers are being served by competing LECs through the use of their own  
18   facilities to demonstrate that there is an actual commercial alternative to SWBT in  
19   Kansas." The FCC also concluded that "more than a de minimus number of residential  
20   customers are served via UNE-P in Kansas."

21         In short, the FCC has hinted that it might, under certain circumstances, allow a  
22   Section 271 to satisfy the residential component of Track A through resale, but it has not  
23   actually done so.

**Q. COULD QWEST ASK THE FCC TO DETERMINE THAT IT MEETS  
TRACK A IN NEW MEXICO SOLELY THROUGH RESALE?**

A. Qwest should not try to become the first Section 271 applicant to ask the FCC to determine that it meets the residential component of Track A solely through resale for a variety of reasons. First, it is not clear that the Commission will recommend to the FCC that Qwest has complied in full with the competitive checklist or with the other requirements of Section 271. In the Commission's November 20, 2001 UNE Order, the Commission indicated that Qwest is not in compliance with checklist item 4. The Commission required several changes to Qwest's SGAT and indicated that Qwest will not be in compliance with checklist item 4 unless it makes the SGAT changes required by the Commission. On November 30, 2001, Qwest filed a new SGAT. In its new SGAT, Qwest made many SGAT changes that it intended to comply with various Commission requirements but specifically stated that it had not made the changes required by the Commission with respect to checklist item 4. On December 14, 2001, Qwest filed a motion asking the Commission to reconsider certain aspects of the November 20, 2001 UNE Order relating to checklist item 4. Under these circumstances, it is reasonable to expect a very real issue about Qwest's checklist compliance. There are also on-going issues about the public interest standard.

The second reason why Qwest should not try to become the first Section 271 applicant to ask the FCC to determine that it meets the residential component of Track A solely through resale is that competitive levels are very weak in New Mexico. If Qwest relies solely on evidence of resale-based residential competition, Qwest will be unable to

1 establish, as it should, that the resellers it has listed are actually “competing providers”  
2 and are serving more than a de minimus number of end-users.

3

4 **Q. PLEASE EXPLAIN THE CONCEPTS OF WHO IS A “COMPETING**  
5 **PROVIDER” AND SERVICE TO MORE THAN A DE MINIMUS NUMBER OF**  
6 **END-USERS.**

7 A. At page 2 of his supplemental testimony, Mr. Teitzel correctly states that, whether  
8 the requirement for residential competition is satisfied by resellers or facilities-based  
9 competitors, Qwest must show that residential competition is being provided by  
10 “competing providers” and those providers are serving more than a de minimus number  
11 of end-users. Although Mr. Teitzel is correct that the FCC has said this, his testimony  
12 omitted a lot of important information about who is (and who is not) a competing  
13 provider and the significance of service to more than a de minimus number of end-users.  
14 These concepts are both very important concepts in analyzing Qwest’s recently filed New  
15 Mexico Track A evidence.

16 At paragraph 75 of the Ameritech/Michigan case, the FCC stated that: 1) The use  
17 of the term “competing provider” suggests that there must be an actual commercial  
18 alternative to the BOC; 2) The mere existence of a tariff does not satisfy Track A; and 3)  
19 A carrier must be in the market and operational, accepting requests for service and  
20 providing service for a fee. Later, in paragraphs 77 and 78 of the same order, the FCC  
21 noted that although no specific market share is required for a carrier to be considered a  
22 competing provider, there are situations where a new entrant’s commercial presence is so  
23 small, that it is not really a commercial alternative to the BOC. The FCC suggested that

1 if a carrier is serving “more than a de minimus number of end-users”, it can be  
2 considered an actual commercial alternative, and therefore a competing provider.

3  
4

5 **Q. MR. TEITZEL SEEMS TO SUGGEST THAT ALL NEW MEXICO CLECS**  
6 **ARE COMPETING PROVIDERS AND THAT ANY LEVEL OF COMPETITION,**  
7 **NO MATTER HOW SMALL, SATISFIES TRACK A, IS THAT TRUE?**

8 A. No. Referring again to the Second Bell South/Louisiana Order, Mr. Teitzel  
9 testified that the FCC does not require that a new market entrant serve a specific market  
10 share in the incumbent’s service area to be considered a “competing provider”. He seems  
11 to suggest that it does not matter how few customers are served by market entrants.  
12 However, that is not true. As I have noted above, a competing provider must be an actual  
13 commercial alternative to the BOC and must be in the market and operational, accepting  
14 requests for service and providing service for a fee. A new entrant can have a  
15 commercial presence that is so small, that it is not really a commercial alternative. Unless  
16 a carrier is serving more than a de minimus number of end-users, it should not be  
17 considered an actual commercial alternative and should not be considered a competing  
18 provider.

19

20 **Q. PLEASE RESPOND TO QWEST'S CLAIM THAT IT PRODUCED**  
21 **UNDISPUTED EVIDENCE AT THE MULTI-STATE THAT FIVE CLECS WERE**  
22 **SERVING 3064 RESIDENTIAL ACCESS LINES VIA RESALE IN NEW**  
23 **MEXICO AND THAT SHOULD SATIFY TRACK A REQUIREMENTS**



1 A. In the supplemental Track A testimony filed by Qwest here in New Mexico, even  
2 Qwest appears to be backing away from the proposition that Qwest satisfies Track A in  
3 New Mexico solely by a showing of resale-based residential competition. Mr. Teitzel  
4 notes twice in his testimony that the combination of the resale-based residential data he  
5 presents and the other data presented by Mr. Badal is the showing Qwest wishes the  
6 Commission to consider. This testimony can be found in the Supplemental Testimony of  
7 David Teitzel at page 4 lines 8-11 and page 8 lines 20-23.

8 Mr. Teitzel also seems to backing away from Qwest's previous claim that resale-  
9 based CLECs serve 3064 residential access lines via resale in New Mexico. First, if you  
10 look at Mr. Teitzel's supplemental testimony at page 7, he indicates that, as of September  
11 30, 2001, there were 1,829 resold residential lines in service in New Mexico, a significant  
12 drop from his earlier testimony. Later, in response to a discovery request made by  
13 AT&T, Mr. Teitzel again revised that number downward, stating that, as of October  
14 2001, there were 1658 resold residential lines in service in New Mexico. A copy of that  
15 discovery response is attached to my testimony as **Exhibit MSR-A**. Mr. Teitzel testified  
16 that a single carrier was reselling "almost 1600 lines" as of September 30, 2001.

17 However, in response to the Commission's Track A survey, the state's largest residential  
18 reseller reported it had 1369 end-use customers as of November 15, 2001. A copy of the  
19 Track A survey response of Comm South is attached to my testimony as **Exhibit MSR-**

20 **B.**

21  
22 **Q. PLEASE RESPOND TO QWEST'S CLAIMS ABOUT THE NUMBER OF**  
23 **CLECS SERVING RESIDENTIAL CUSTOMERS IN NEW MEXICO VIA**  
24 **RESALE**

A. Mr. Teitzel's newly filed evidence about the number of CLECs engaged in resale-based competition in New Mexico is not accurate. In confidential attachment D to his supplemental testimony, Mr. Teitzel listed the names of the nine competitors that he claims are providing resold residential service in New Mexico as of September 30, 2001. In confidential attachment B to a supplemental response to Staff discovery request 4-2, Qwest provided the number of resale lines in service for each of those nine competitors.

\*\*\*\*\*CONFIDENTIAL [XXX

[illegible][illegible][illegible][illegible][illegible]

XX| END

**CONFIDENTIAL MATERIAL \*\*\*\*\*** There is no question that the providers serving one line or three lines or six lines have commercial presence that is so small, that they are not commercial alternatives to Qwest. I have reviewed Qwest's annual report for New Mexico for the year ending December 31, 2000. In that report, Qwest reported that it serves 610,895 residential lines in New Mexico. A copy of Qwest's Subscriber and Access Line Data from its Annual Report for the year ended December 31, 2000 is attached to my testimony as **Exhibit MSR-D**. At page 2 of the Affidavit of John Badal, filed in this case on October 5, 2001, he stated that as of July 31, 2001, Qwest served 604,898 residential lines in New Mexico. In any event, it appears that Qwest serves somewhere between 610,000 and 604,000 residential lines in New Mexico. A carrier

1 serving between one and 10 lines in New Mexico is serving a de minimus number of end-  
2 users and should not be considered a competing provider.

3 I researched the Commission's tariff records for each of the competitors listed by  
4 Mr. Teitzel in confidential attachment D to his supplemental testimony.

5 \*\*\*\*\*CONFIDENTIAL [xx  
6 xx  
7 xx  
8 xx  
9 xx  
10 xx]. \*\*\*\*END

11 **CONFIDENTIAL MATERIAL** In Staff discovery request 6-8 Staff asked Qwest about  
12 the possible inclusion of the Pseudo-CLEC and the inclusion of McLEOD & HPC Prime,  
13 neither of which have tariffed residential rates. On December 12, 2001, Mr. Teitzel  
14 reported that: "Qwest is investigating this request and will respond as soon as possible.  
15 The unreliable nature of Mr. Teitzel's list of resellers serving residential customers in  
16 New Mexico is emphasized by the fact that Mr. Badal attached a list of active CLEC  
17 residential local exchange tariffs as Attachment A to his October 5, 2001 affidavit. Mr.  
18 Badal did not list HPC Prime or McLeod as having an active residential local exchange  
19 tariff in New Mexico. On December 21, 2001, McLeod USA filed its late response to the  
20 Commission's Track A Survey. It clearly indicates that McLeod USA serves no  
21 residential lines via resale (or via any other means) in New Mexico. While certain  
22 information in McLeod's Track A Survey response is considered highly confidential  
23 McLeod has indicated (through Mr. Bill Heaston) that the specific fact that McLeod

1 serves no residential customers in New Mexico is not confidential and can be disclosed  
2 publicly. A copy of McLeod's complete Track A Survey response is attached as Highly  
3 Confidential **Exhibit MSR-E**.

4 I have been involved in the ROC OSS test process for Staff. From my  
5 involvement in this process, I know that the psuedo-CLEC developed for the purpose of  
6 placing CLEC orders for the purpose of testing Qwest's OSS has been listed in  
7 confidential attachment D to the supplemental testimony of David Teitzel as an active  
8 CLEC providing resale to residential customers in New Mexico. A separate pseudo-  
9 CLEC developed for the test of Qwest's OSS in Arizona has also been listed in  
10 confidential attachment D to the Supplemental Testimony of David Teitzel as an active  
11 CLEC providing resale to residential customers in New Mexico. These CLECs and the  
12 number of lines that Qwest claims they serve are not real and should not be included in  
13 any accurate count of residential resellers in New Mexico or the number or end-users  
14 served by them.

15  
16 **Q. GIVEN THE SPECIFIC FACTS AND CIRCUMSTANCES PRESENT IN**  
17 **NEW MEXICO, SHOULD THE COMMISSION ACCEPT QWEST'S**  
18 **SUGGESTION THAT RESALE-BASED COMPETITORS ARE COMPETING**  
19 **WITH QWEST FOR RESIDENTIAL CUSTOMERS AND QWEST IS LOSING**  
20 **RESIDENTIAL END-USE CUSTOMERS TO THESE RESALE-BASED**  
21 **PROVIDERS?**

22 A. No. I have reviewed the tariffs on file in New Mexico for the CLECs listed by  
23 Mr. Teitzel in confidential attachment D to his supplemental testimony as competitors  
24 providing resold residential service in New Mexico. Generally, the tariff terms for

1 service by these resellers are more expensive and more limiting (from the end-use  
2 residential customer's perspective) than the terms offered by Qwest to end-use residential  
3 customers. I have prepared an exhibit summarizing these terms. It is attached to this  
4 testimony as **Exhibit MSR-F**. Five of the nine resellers listed by Mr. Teitzel as  
5 providing service to residential customers in New Mexico charge a monthly flat rate  
6 between \$41.99 and \$49.95 for local telephone service. Qwest's monthly flat rate for  
7 local service to residential customers in New Mexico is \$10.66. Five of the nine resellers  
8 listed by Mr. Teitzel require residential end-use customers to pre-pay for any month for  
9 which they want service. For four of the nine, end-use customers have no access to long  
10 distance service. One reseller of residential services does not accept customer payments  
11 by check. Generally, customers with access to Qwest local telephone service would not  
12 be likely to find terms like these competitively attractive. To a large extent, the  
13 customers utilizing resold residential competitive service are "high risk" customers.  
14 These include customers with poor payment histories or bad credit. Often, these are  
15 customers that have been disconnected by Qwest for non-payment.

16 AT&T served a discovery request on Qwest seeking information about how  
17 many residential customers are disconnected by Qwest for non-payment. In Qwest's  
18 confidential attachment A in response to AT&T 1-18, Qwest indicated that

19 **\*\*\*\*CONFIDENTIAL [XX**  
20 **XX**  
21 **XX**  
22 **XX**  
23 **XX**

1   XX  
2   XXXXXXXXXXXXXXXXXXXXXXXXXXXX]\*\*\*\*\*END CONFIDENTIAL Keep in mind that, even  
3   using Qwest's own inflated numbers, the total number of residential customers receiving  
4   local service through resale-based competitors in New Mexico was 1658 as of October  
5   2001. The number is much smaller than that in reality. Compare the number 1658  
6   residential customers served by resale-based competitors with the average number  
7   \*\*\*\*\*Confidential [xxxxxxx ]\*\*\*\*\*End Confidential residential Qwest customers  
8   disconnected for non-payment each month. This comparison is important because it  
9   shows that resale-based competitors are not even close to saturating the market of high-  
10   risk customers who have been disconnected by Qwest for non-payment. In reviewing  
11   these numbers, its is easy to see that end-use customers targeted and acquired by  
12   residential resellers in New Mexico are, by and large, not Qwest customers but customers  
13   that Qwest has disconnected. These residential resellers are therefore not competing with  
14   Qwest for Qwest customers in any real sense.

15

16                   **E-911 RECORD TELEPHONE NUMBER COUNTS SHOWING 4,796**  
17                   **RESIDENTIAL AND 19,144 BUSINESS NUMBERS REPORTED BY**  
18                   **FACILITIES BASED CLECS**

19

20   Q.     PLEASE ADDRESS THE CLAIM MADE BY MR. BADAL THAT THE  
21   NEW MEXICO E-911 WIRELINE CLEC TELEPHONE NUMBER "IN  
22   SERVICE" COUNTS SELF-REPORTED BY CLECS AS OF SEPTEMBER 28,  
23   2001 WERE 4,796 FOR RESIDENTIAL AND 19,144 FOR BUSINESS.

1 A. At page 4 of Mr. Badal's Affidavit he claims that, as of September 28, 2001, "The  
2 New Mexico E911 facilities-based wireline CLEC telephone number in service counts  
3 were 4,796 for residential and 19,144 for business. He claims these numbers come from  
4 a report produced for Qwest by Intrado, the contractor who administers the E-911  
5 database. The numbers presented by Mr. Badal are misleading, unreliable, and  
6 inaccurate. For reasons that I will reveal in this testimony, the Commission should  
7 discount this new Track A evidence as wholly unreliable and inaccurate. This new  
8 evidence should be disregarded by the Commission.

9  
10 **Q. WHAT IS THE INTRADO REPORT?**

11 A. The E-911 database is administered by a contractor paid by Qwest to track E-911  
12 information in accordance with North American Numbering Administration ("NENA")  
13 standards. The database is maintained for the purpose of assisting emergency personnel  
14 such as firefighters to match a caller's telephone number with a physical address. In this  
15 case, the database has been referred to as the Intrado Database. According to Mr. Badal's  
16 Affidavit, Intrado typically administers E-911 telephone number counts only at the  
17 aggregated level and not broken down by business and residential categories. However,  
18 Qwest asked Intrado to produce a report for its use in this section 271 Track A  
19 proceeding displaying E-911 record information in separate residential and business  
20 categories. Intrado produced the requested report on September 28, 2001. In response to  
21 a discovery request by the Attorney General, Qwest has revealed that Qwest requested  
22 Intrado to prepare the special report listing each Telco by name along with a break down  
23 of total TN's (telephone numbers) by Class of Service by Telco as an addendum to the

1 current Co-Carrier metric report delivered by Intrado to Qwest on the 15<sup>th</sup> of every  
2 month.

3  
4 **Q. DID STAFF AND THE INTERVENORS RECEIVE THE INTRADO**  
5 **REPORT AS REQUESTED IN DISCOVERY?**

6 A. Staff and intervenors have received in discovery what Qwest asserts is the  
7 unmasked New Mexico portion of the report. Qwest produced this portion of the report  
8 only after multiple requests, a motion to compel, and a negotiated understanding  
9 regarding the heightened confidentiality of the report reached in a hearing held on  
10 November 30, 2001. Once Qwest had received the newly executed nondisclosure  
11 agreements from the parties, Qwest forwarded the report masking all companies not  
12 classified as CLECs providing residential and business service through facilities-based  
13 competition. Staff received the report on December 5, 2001.

14  
15 **Q. WHAT INFORMATION IS COMPILED IN THE INTRADO REPORT?**

16 A. Staff's understanding of what is included in the Intrado report has been gleaned  
17 through discovery requests, and review of the report itself. The Intrado Report is  
18 compiled from a larger report (Co-Carrier Metric Report). In response to Staff discovery  
19 request 5-1, Qwest stated the Co-Carrier Metrics Report is compiled by Intrado at the  
20 request of Qwest to empirically demonstrate parity of E911 database administration for  
21 all carriers providing E911 information to Intrado. A copy of Qwest's response to Staff  
22 discovery request 5-1 is attached as **Exhibit MSR-H**. Each of the carriers, whether they  
23 are ILEC, CLEC, or wireless, self-reports information to Intrado so that telephone



1 numbers can be matched with physical addresses for emergency response purposes. Each  
2 non-Qwest carrier must report the information to Intrado under the following  
3 circumstances; when a carrier purchases stand alone UNE loops from Qwest, or when a  
4 CLEC provides service through their own facilities. In his affidavit, Mr. Badal stated  
5 only these numbers were included in his TN count supplied in his affidavit. Numbers  
6 served by resellers or via UNE-Platform ("UNE-P") basis are not included in the report  
7 according to Qwest. Mr. Teitzel has confirmed this in response to Staff discovery. Staff  
8 has attached **Exhibit MSR-I** which is Qwest's answer to Staff interrogatory 3-1-8.  
9 Qwest claims that, in the process of "self-reporting" the information to Intrado, a CLEC  
10 must also specify what "class of service" the telephone numbers reported represent.  
11 Qwest has stated that there are 11 classes of service. However, Qwest relies on only 2  
12 classes (business and residential) in its testimony here. As Qwest pointed out in response  
13 to Staff Interrogatory 5-6, the eleven classes are residence, business, residence PBX,  
14 business PBX, centrex, coin 1 way out, coin 2 way, wireless, residence OPX, business  
15 OPX, and customer owned coin telephone. Qwest's reponse to Staff discovery request 5-  
16 6 is attached as **Exhibit MSR-J**. Staff has also attached the Intrado Report that Staff  
17 received from Qwest in discovery as **Highly Confidential Exhibit MSR-K**.

19 Q. WHAT DOES THE INTRADO REPORT CLAIM WITH REGARD TO  
20 THE NUMBER OF RESIDENTIAL TELEPHONE NUMBERS REPORTED BY  
21 FACILITIES-BASED CLECS IN NEW MEXICO?

22 A. The unmasked Intrado Report supplied to Staff on December 5, 2001 claims that  
23 \*\*\*\*\***Highly Confidential**/(XXX

1 XX  
2 XX  
3 XX  
4 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]\*\*\*\*\*End Highly Confidential. Staff has  
5 condensed the information contained in the Intrado Report in **Highly Confidential**  
6 **Exhibit MSR-L**. Again, Qwest argued repeatedly that CLECs self-report to Intrado, and  
7 that only CLECs who purchase stand-alone unbundled loops or who supply service  
8 through their own facilities submit information to Intrado for input into the database.

9

10 **Q. DOES THE SEPTEMBER 28, 2001 INTRADO REPORT PROVIDE**  
11 **EVIDENCE ABOUT HOW MANY BUSINESS OR RESIDENTIAL LINES**  
12 **QWEST OR ANY CLEC SERVES IN NEW MEXICO?**

13 A. No. The fact that Qwest has reported the number of residential and business E911  
14 “telephone number counts” (“TN counts”) does not mean they are reporting the actual  
15 number of residential and business access lines served through Qwest or CLECs in New  
16 Mexico. Qwest has admitted in discovery that TN counts do not directly correspond to  
17 access lines in service in Qwest’s response to Staff’s request 6-5(E). Staff has attached  
18 the response as **Exhibit MSR-M**. Qwest suggests that the E-911 database under-  
19 estimates the number of access lines. Later in this testimony I will show that the reverse  
20 may actually be true. The E-911 database probably inflates the number of access lines.  
21 However, it is undisputed that the number of residential TN counts reflected by the E-911  
22 database DO NOT correspond to the actual number of residential access lines served by  
23 CLECs in New Mexico.

1

2 **Q. IS THERE ANY WAY TO CHECK THE INFORMATION PRESENTED**  
3 **BY QWEST FROM THE INTRADO REPORT FOR ACCURACY?**

4 A. Yes. There are ways to check whether the information claimed is accurate. First,  
5 it is possible to simply ask the CLECs listed in the Intrado Report if the telephone  
6 number counts listed for them in the report are accurate. Second, the Commission issued  
7 a Track A survey for all CLECs registered in New Mexico requesting each CLEC to tell  
8 the Commission how many business and residential customers the CLEC is serving  
9 through their own facilities, through the purchase of Qwest unbundled network elements  
10 (“UNEs”), or through the resale of Qwest’s services. Several of the CLECs listed in the  
11 Intrado Report have answered the survey and these survey results can be used for  
12 comparison to the numbers of customers Qwest claims are served by CLECs.

13

14 **Q. ARE THE NUMBERS QWEST PRESENTS FROM THE INTRADO**  
15 **REPORT AS THE NUMBER OF RESIDENTIAL FACILITIES-BASED**  
16 **TELEPHONE NUMBERS REPORTED BY BROOKS FIBER**  
17 **COMMUNICATIONS AND WORLDCOM TECHNOLOGIES ACCURATE?**

18 A. No. In fact, Staff believes them to be wholly inaccurate. At one time Brooks  
19 Fiber was a CLEC operating in New Mexico. However, Brooks Fiber has been  
20 purchased by MCI WorldCom. The switch owned by Brooks Fiber at that point became  
21 the property of WorldCom. Brooks Fiber remained a subsidiary of WorldCom. After  
22 receiving the unmasked Intrado Report in discovery, I spoke with World Com  
23 representatives Susan Travis, Terry Tan, and David Fromberg. They informed me that

1 WorldCom/Brooks has no residential customers in New Mexico. At the time of our  
2 conversation, these WorldCom/Brooks representatives were not aware of the  
3 Commission's Track A survey and they had not, therefore responded. Once they learned  
4 of the survey and the Commission's order compelling responses, they filed a survey  
5 response December 14, 2001. A copy of the WorldCom/Brooks response is attached as  
6 **Highly Confidential Exhibit MSR-N**. WorldCom stated in its response that it does not  
7 serve ANY residential customers through facilities-based service (or otherwise) in New  
8 Mexico. This revises the total for Brooks and WorldCom to 0. Although certain  
9 information in WorldCom's Track A Survey response is considered highly confidential,  
10 WorldCom has indicated (through Teresa Tan) that the fact that WorldCom serves no  
11 residential customers in New Mexico is not confidential and may be publicly disclosed.  
12 Staff has made the adjustment to the number of residential customers served by these  
13 companies in **Highly Confidential Exhibit MSR-L**.

14  
15 **Q. ARE THE NUMBERS THAT QWEST PRESENTS FROM THE INTRADO**  
16 **REPORT AS THE NUMBER OF RESIDENTIAL FACILITIES-BASED**  
17 **TELEPHONE NUMBERS REPORTED BY GST TELECOM INC. ACCURATE?**

18 A. No. Again, Staff finds them to be completely inaccurate. GST Telecom serves  
19 no customers in New Mexico. In fact, GST Telecom does not exist. The majority of  
20 GST Telecom's assets were purchased by Time Warner Telecommunications ("Time  
21 Warner") in January of 2001. However, Time Warner did not acquire that component of  
22 GST's New Mexico operations that provided local service to residential customers in  
23 New Mexico. When Time Warner purchased GST, Time Warner continued to serve the

1 business customers previously served by GST, but discontinued service to GST's  
2 residential customers. Most, if not all of GST's residential local customers migrated back  
3 to Qwest for local telephone service. Staff has discussed this matter with Brian D.  
4 Thomas, Time Warner Vice President of Regulatory Affairs. Mr. Thomas has provided  
5 an affidavit attesting to these facts. His affidavit is attached as **Exhibit MSR-O**.

6 Qwest was or should have been aware of these facts prior to filing its New  
7 Mexico specific Track A testimony in this proceeding. Qwest Witness Teitzel has stood  
8 for cross-examination regarding this very subject in the multi-state hearings regarding his  
9 multi-state Track A testimony. At that time he claimed in his confidential Exhibit DLT-  
10 10 that GST Telecom served residential customers through facilities-based service in  
11 New Mexico. On cross-examination by Advocacy Staff Counsel Maryanne Reilly and  
12 Commission Counsel Anthony Medeiros, Witness Teitzel was informed of these facts  
13 regarding GST Telecom. See multi-state Tr. 6/7/01 pp. 44-55 and multi-state  
14 confidential Tr. 6/26/01 pp. 122-126. The following exchange occurred at the June 26,  
15 2001 multi-state hearing:

16 Mr. Medeiros: Would it surprise you to learn that, in fact, Time  
17 Warner never did purchase GST's local phone service assets?

18 Mr. Teitzel: That is contrary to my understanding, and, yes, that  
19 would surprise me.

20 Mr. Medeiros: And are you aware now whether Time Warner is, in  
21 fact providing local phone service to GST's former customers?

22 Mr. Teitzel: I would respond by saying, if its correct that Time  
23 Warner did not purchase GST's residential operations, then your  
24 conclusion would be correct.

25 Mr. Medeiros: Do you know who is providing local phone service  
26 to GST's former customers?

27 Mr. Teitzel: As I sit here, I do not.

28 Mr. Medeiros: Would it surprise you to learn that Qwest's now  
29 providing that service to GST's former customers?

30 [Objection and over-ruling]

1                   Mr. Teitzel: If no other carrier has assumed those operations,  
2                   Qwest would be the default carrier, so I assume that would be the case, if  
3                   those services were as you stated.  
4

5                   In his Affidavit, Mr. Thomas of Time Warner confirms that Time Warner did not  
6                   acquire that component of GST's New Mexico operations that once served residential  
7                   customers. Mr. Thomas confirms that "most, if not all, of those customers migrated back  
8                   to Qwest". Mr. Thomas also clarifies that Time Warner does not provide local service to  
9                   residential customers in New Mexico. Time Warner's response to the Commission's  
10                  Track A survey also confirms this. A copy of Time Warner's Track A Survey Response  
11                  is attached as **Highly Confidential Exhibit MSR-P**.

12                  Yet, as though struck by amnesia, Qwest again submitted sworn evidence  
13                  claiming that GST is serving residential customers in New Mexico. This time the mis-  
14                  information is compiled in Mr. Badal's reference to the contents of the Intrado Report.

15                  The fact that Qwest has once again presented this inaccurate information under  
16                  oath casts doubt on all the information provided by Qwest in its attempts to show  
17                  residential competition in New Mexico. Also the fact that the GST information was  
18                  included in the Intrado Report brings into doubt the reliability of all the information in  
19                  that report. It is conceivable that at one time GST did report residential numbers to  
20                  Intrado. However, now that they no longer serve residential customers, those numbers  
21                  should have been assigned to Qwest or purged from the system. This creates doubts  
22                  about whether the information contained in the E-911 database is properly reassigned,  
23                  updated or purged. Thus, there is a real risk that all the information in the database is out  
24                  of date and inaccurate and therefore useless for determining the present number of  
25                  customers served by facilities-based competitors.

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**Q. WHAT IS STAFF'S CONCLUSION GIVEN STAFF'S REVIEW OF THE INFORMATION OFFERED BY QWEST REGARDING RESIDENTIAL FACILITIES-BASED COMPETITION IN NEW MEXICO BASED ON THE INFORMATION IN THE INTRADO DATABASE?**

A. Staff's conclusion is that there are no facilities-based CLECs selling to residential customers in New Mexico, and that the evidence that Qwest has offered based on the Intrado report attempting to show that this competition exists has no merit. GST, Brooks Fiber, and WorldCom technologies serve no residential customers in New Mexico. The number of residential customers served by CLECs through their own facilities as of September, 2001 is actually zero, not 4,796 as claimed by Qwest.

**Q. WHAT DOES QWEST CLAIM THE INTRADO REPORT SHOWS WITH REGARD TO THE NUMBER OF BUSINESS TELEPHONE NUMBERS REPORTED BY FACILITIES-BASED CLECS IN NEW MEXICO?**

A. Mr. Badal in his Affidavit claims that facilities-based CLECs have reported 19,144 business telephone numbers in service in New Mexico. His affidavit indicates this total is derived from the Intrado Report. The CLECs shown as serving business customer through their own facilities are \*\*\*\*\***Highly Confidential** [xxxxxxxxxxxxxx  
XX  
XX  
XX  
XX





1 Mexico. Therefore, there is no apples to apples comparison. Second, there is a  
2 considerable risk that the number counts reported are inflated when a CLEC serves large  
3 business customers or apartment complexes with many lines.

4  
5 **Q. PLEASE EXPLAIN HOW A CLEC MAY REPORT MORE TELEPHONE**  
6 **NUMBERS THAN THE NUMBER OF ACCESS LINES IT USES TO CONNECT**  
7 **TO QWEST'S SYSTEM?**

8 A. A CLEC may load into the 911 database all PBX station level telephone numbers  
9 associated with Direct Inward Dialing (DID) trunks to support enhanced 9-1-1 service for  
10 a PBX. A DID trunk is a trunk from the central office which passes the last two to four  
11 digits of the Listed Directory Number to the PBX or hybrid phone system. The digits may  
12 then be used verbatim or modified by the phone system programming to be the equivalent  
13 of an internal extension. Therefore, an external caller may reach an internal extension by  
14 dialing a 7-digit central office number.

15 A CLEC may have a PBX trunk with 100 outgoing lines which feed 1000 lines in  
16 a building. The CLEC would only have 100 outgoing lines because the CLEC has  
17 calculated that only 100 of the 1000 employees of the firm will either be placing an  
18 outgoing call or receiving an incoming call at any one time. The PBX serves to route the  
19 calls in and out from the lines running to each desk, but only uses 100 access lines to  
20 connect to the outside world via the Public Switched Telephone Network. When a PBX  
21 provides enhanced 911 service by delivering the station level telephone number and  
22 address to the emergency communication center in most cases the 911 call is routed over  
23 dedicated CAMA trunks acquired from the ILEC. These trunks connect the PBX to the

1 911 Selective Routing Tandem operated by the ILEC and not across the traditional Public  
2 Switched Telephone Network. NENA requires that each phone in the building have an  
3 associated emergency number, ie TN, so that emergency personnel will be alerted to the  
4 actual physical location where the call was made. So, the emergency numbers the CLEC  
5 reports to Intrado in this case would not reflect the number of actual access lines from the  
6 PBX to Qwest's system. The system would also work the same if a CLEC has a PBX  
7 trunk connected to a residential apartment complex. Fewer access lines will connect the  
8 PBX to Qwest's system than the number of lines running to each of the phones in each  
9 apartment. The result is that the number of lines reported in the Intrado database may be  
10 greatly inflated and overstate the number of actual access lines.

11

12 **Q. WHO DOES QWEST BILL IN THE EVENT A BUILDING OR AN**  
13 **APARTMENT COMPLEX HAS A CLEC-OWNED PBX SYSTEM?**

14 A. Qwest bills the CLEC for interconnection to the PBX trunk and for the dedicated  
15 CAMA trunks acquired for enhanced 911 service. The CLEC in turn bills a business;  
16 either a business organization with multiple phones for its employees or an apartment  
17 complex owner with multiple phones for tenants. Either way, the CLEC's customer is a  
18 business. If Qwest owned the PBX, then Qwest would bill the company or apartment  
19 complex owner instead of the CLEC.

20

21 **Q. WHAT IS STAFF'S CONCLUSION REGARDING QWEST'S RECENT**  
22 **NEW MEXICO SPECIFIC TRACK A EVIDENCE FOR RESIDENTIAL AND**  
23 **BUSINESS FACILITIES-BASED COMPETITION IN NEW MEXICO?**

1 A. Staff believes the recent New Mexico specific evidence provided by Qwest  
2 regarding residential and business facility-based competition is inaccurate, unreliable,  
3 and blatantly wrong. Staff has conclusively shown that the two CLECs that Qwest  
4 claims serve residential customers, Brooks Fiber and GST do not currently serve  
5 residential customers. Evidently, Intrado does not update, reassign, or purge old  
6 information from its database effectively. Also, CLEC responses to the Commission's  
7 Track A survey showed that the Intrado telephone number counts are inconsistent with  
8 and unrelated to the number of access lines that CLECs serve in New Mexico. The  
9 Intrado database was never meant to serve as a tool for the accurate reporting of access  
10 lines served by local exchange carriers in 271 proceedings; it is a tool designed to get  
11 emergency personnel to the location of the phone where the emergency call was made.  
12 The Commission should reject the Intrado E911 database information as a source of  
13 evidence that CLECs are serving customers through facilities-based service in New  
14 Mexico. The Commission instead should rely on the material presented in this testimony  
15 and CLEC responses to the Commission's Track A survey, which have been summarized  
16 in **Highly Confidential Staff Exhibit MSR-L**. The Commission should therefore find  
17 that there are NO CLECs serving ANY residential customers through facilities-based  
18 service in New Mexico, and accept the total number of business customers served by  
19 facilities-based CLECS as specified in **Highly Confidential Exhibit MSR-L** developed  
20 through responses to the Commission's Track A Survey.

21  
22 **CRICKET WIRELESS AS A SUBSTITUTE FOR QWEST WIRELINE SERVICE**  
23

1     **Q.     PLEASE ADDRESS QWEST'S CLAIM THAT CRICKET WIRELESS**  
2     **SERVICE IS A SUBSTITUTE FOR QWEST WIRELINE SERVICE IN NEW**  
3     **MEXICO.**

4     A.     The Affidavit of John Badal has two main parts: the numbers from the E911  
5     Intrado database for facilities-based residential and business competition in New Mexico  
6     discussed previously, and the claim that Cricket wireless service in Albuquerque and  
7     Santa Fe constitutes competition with Qwest for residential customers. Along with the  
8     Affidavit Mr. Badal included Attachments B through J in an effort to support Qwest's  
9     assertion that Cricket's wireless service is a competitive substitute for Qwest's wireline  
10    service in New Mexico. Qwest submitted further testimony regarding Cricket wireless  
11    service in the Direct Testimony of John Badal on November 16, 2001. The Affidavit  
12    filed earlier by Witness Badal was attached as Exhibit JWB-1 to the Direct Testimony of  
13    John Badal. Also Attached to Witness Badal's November 16, 2001 testimony are  
14    Exhibits JWB-2 and JWB-3. Mr. Badal claims in his affidavit that the FCC has  
15    recognized PCS such as Cricket as telephone exchange service for purposes of Track A.  
16    He cites the Second BellSouth/Louisiana Order which I have cited earlier in this  
17    testimony.

18

19    **Q.     PLEASE ADDRESS EXHIBITS JWB-2, JWB-3 AND ATTACHMENTS B**  
20    **THROUGH J TO THE AFFIDAVIT OF MR. BADAL.**

21    A.     Exhibit JWB-2 contains a mailer promoting Cricket Service. Exhibit JWB-3  
22    contains 3 affidavits from Cricket customers discussing why they became Cricket  
23    customers. Attachment B contains Cricket's website homepage advertisement for

1 Cricket service. Attachment C contains a printout of Cricket's page of Frequently Asked  
2 Questions ("FAQs"). Attachment D contains an excerpt from the Leap Wireless SEC  
3 form 10-Q Quarterly Report of May 15, 2001. Attachment E contains a February 22,  
4 2001 Albuquerque Journal Article about Cricket service in New Mexico. Attachment F  
5 is a September 10, 2001 Albuquerque Journal article which discusses the replacement of  
6 wireline service by wireless service nationwide. Attachment G contains the page 32  
7 excerpt from the FCC's July 17, 2001 Sixth Annual Report on the State of Competition in  
8 the Wireless Industry, and Attachment H contains page 33 of the same study.  
9 Attachment I is the IDC study referenced in Attachment G. Attachment J contains the  
10 written transcript of two television ads for Cricket which appeared on Channel 7 on  
11 September 26, 2001. I reviewed the evidence presented by Qwest in light of the criteria  
12 set forth by the FCC in its Second BellSouth/Louisiana Order in forming my opinion as  
13 to whether Qwest has met its burden of proof in showing that Cricket Broadband PCS  
14 service is being substituted for Qwest landline service in New Mexico.

15

16 **Q. WHAT HAS QWEST ASSERTED ABOUT CRICKET'S PCS WIRELESS**  
17 **SERVICE AS A SUBSTITUTE FOR QWEST'S RESIDENTIAL SERVICE?**

18 A. That Cricket wireless is marketing its wireless PCS service as a substitute for  
19 Qwest's landline phone service and that some customers in New Mexico are buying  
20 Cricket's service to replace their telephone lines or in lieu of getting a second line. More  
21 importantly, in his Affidavit Mr. Badal quoted the FCC in the Second  
22 BellSouth/Louisiana Order as stating: "we conclude that the broadband PCS service  
23 offered by the PCS providers at issue in this application, which provides two-way mobile

1 voice service, qualifies as telephone exchange service for puposes of Track A” (pg 5&6  
2 of Mr. Badal’s Affidavit). Mr. Badal also states that the FCC, in the same order, stated:  
3 “evidence of marketing efforts by broadband and PCS providers designed to induce such  
4 replacement are also relevant”.

5  
6 **Q. HAS MR. BADAL PROVIDED A COMPLETE OR ACCURATE PICTURE**  
7 **OF THE FCC’S CONCLUSIONS ABOUT PCS WIRELESS COMPETITION?**

8 A. No. Mr. Badal has selected very narrow passages from the FCC’s Second  
9 BellSouth/Louisiana Order and has omitted a great deal. Qwest’s selective reading of the  
10 FCC’s order is disingenuous and misleading. Any complete reading of the FCC’s Second  
11 BellSouth/Louisiana Order will show that evaluation of whether PCS wireless should be  
12 considered as competition for Track A purposes is far more complicated than Mr. Badal  
13 suggests.

14  
15 **Q. WHAT WAS THE FCC’S CONCLUSION ABOUT WHETHER PCS**  
16 **WIRELESS SERVICE WAS IN COMPETITION WITH BELLSOUTH’S**  
17 **WIRELINE SERVICE IN BELL SOUTH’S 271 APPLICATION IN LOUISIANA.**

18 A. The FCC concluded that Bell South did not meet its burden of proof showing that  
19 wireless PCS service should be considered a competitive substitute for SBC’s wireline  
20 service. In fact, if we complete the paragraph from which Mr. Badal quotes in his  
21 Affidavit, we find the FCC actually said the following in Paragraph 25 of the Second  
22 BellSouth/Louisiana Order:

23 BOCs, in filing section 271 applications, can rely on the presence of broadband  
24 PCS providers to satisfy Track A. The Commission has emphasized, however,

1 that a PCS provider on which the applicant seeks to rely for the purposes of  
2 section 271(c)(1)(A) must offer “service that both satisfies the statutory definition  
3 of “telephone exchange service” in 3(47)(A) and competes with the telephone  
4 exchange service offered by the applicant in the relevant state”. We conclude that  
5 the broadband PCS service offered by the PCS providers at issue in this  
6 application, which provides two-way mobile voice service, qualifies as telephone  
7 exchange service for purposes of Track A. BellSouth has not shown, however,  
8 that this broadband PCS service currently competes with the wireline telephone  
9 exchange service offered by BellSouth in Louisiana. Accordingly, we conclude  
10 that BellSouth **has not demonstrated** that it satisfies the requirement of Track A  
11 based on the existence of these broadband PCS carriers in Louisiana.  
12  
13

14 As can plainly be seen, Mr. Badal has quoted only a portion of the FCC Second  
15 BellSouth/Louisiana Order and misrepresented the FCC’s ruling by omission. Two  
16 critical factors were ignored by Mr. Badal in his citation from this case. First, the 271  
17 applicant must show that the PCS service actually competes with the BOC. Second, the  
18 FCC concluded that BellSouth **did not demonstrate** that it satisfied the requirement of  
19 Track A based on the mere existence of the broadband PCS carriers in Louisiana.  
20

21 **Q. WHAT CRITERIA DID THE FCC USE IN EVALUATING WHETHER**  
22 **BELLSOUTH SATISFIED THE REQUIREMENT OF TRACK A BASED ON**  
23 **THE EXISTENCE OF THE BROADBAND PCS CARRIERS IN LOUISIANA?**

24 A. The FCC discussed competition from PCS carriers at Paragraphs 24-43 of the  
25 Second BellSouth/Louisiana order. The FCC begins its discussion with the preliminary  
26 paragraph cited by Staff rejecting BellSouth’s evidence with regard to PCS wireless  
27 service as substitute for wireline service. The FCC then asked the following questions: 1)  
28 does Broadband PCS constitute local telephone exchange service; and 2) can broadband  
29 PCS carriers be considered “competing providers”. The FCC determined that the local  
30 exchange areas for the PCS providers in the Louisiana case did constitute local telephone

1 exchange service. They did not however, consider the evidence presented by BellSouth  
2 adequate to show that customers were taking broadband PCS service in lieu of a primary  
3 or secondary wireline phone provided by BellSouth.

4  
5 **Q. WHAT SPECIFICALLY DID THE FCC SAY IN THE SECOND**  
6 **BELLSOUTH/LOUISIANA ORDER REGARDING WHAT CONSTITUTES A**  
7 **“COMPETING PROVIDER” WITH REGARD TO BROADBAND PCS**  
8 **WIRELESS SERVICE?**

9 A. Paragraph 31 of the Second BellSouth/Louisiana Order spells it out rather clearly:

10 We believe that the BOC must show that broadband PCS is being used to  
11 replace wireline service, not as a supplement to wireline. In previous  
12 orders, the Commission has stated “that the use of the term ‘competing  
13 provider’ in section 271(c)(1)(A) suggests that there must be ‘an actual  
14 commercial alternative to the BOC’. To the extent that consumers  
15 purchase PCS service as a supplement to their existing wireline service,  
16 the two services are not competing with each other. Evidence that  
17 broadband PCS service constitutes a competitive alternative could include  
18 studies, or other objective analyses, identifying customers that have  
19 replaced their wireline service with broadband PCS service, or would be  
20 willing to consider doing so based on price comparisons. Evidence of  
21 marketing efforts by broadband PCS providers designed to induce such  
22 replacement are also relevant.

23  
24  
25 In Paragraph 32 of the same order the FCC also stated “The most persuasive evidence  
26 concerning competition between PCS and wireline local telephone service is evidence  
27 that customers are actually subscribing to PCS in lieu of wireline service at a particular  
28 price. Actual customer behavior is more persuasive than price comparison studies alone  
29 because of the advantages and disadvantages associated with PCS and wireline telephone  
30 service”.



1     **Q.     WHAT EVIDENCE DID BELL SOUTH PRESENT IN THE SECOND**  
2     **BELL SOUTH/LOUISIANA CASE TO SHOW THAT BROADBAND PCS**  
3     **WIRELESS SERVICE WAS BEING SUBSTITUTED FOR WIRELINE SERVICE**  
4     **IN LOUISIANA?**

5     A.     BellSouth presented a market research survey by M/A/R/C Research ("MARC  
6     Study"), and economic study by the National Economic Research Associates ("NERA  
7     Study"), and the availability of AT&T's Digital One Rate Plan.

8  
9     **Q.     ON WHAT BASIS DID THE FCC REJECT THE EVIDENCE PROVIDED**  
10    **BY BELL SOUTH FROM THE MARC STUDY?**

11    A.     At Paragraph 35 of the Second BellSouth/Louisiana Order the FCC said the  
12    MARC study was:

13           fundamentally flawed and could not be relied upon to demonstrate that  
14           broadband voice PCS is a substitute for traditional wireline service. In  
15           particular, we conclude that the M/A/R/C study contains the following  
16           significant methodological deficiencies: (1) the sample group was not  
17           randomly selected, (2) the study is not based on statistical analysis; and (3)  
18           the study disguises the complementary nature of the services.

19  
20  
21    **Q.     ON WHAT BASIS DID THE FCC REJECT THE EVIDENCE PROVIDED**  
22    **BY BELL SOUTH FOR THE NERA STUDY?**

23    A.     At Paragraph 40 of the Second BellSouth/Louisiana Order the FCC addressed the  
24    NERA Study presented by BellSouth. The NERA study contended that 7 to 15 percent of  
25    BellSouth's residential customers in New Orleans could consider switching to PCS  
26    PrimeCo on price grounds alone. The FCC found the evidence to be unpersuasive in that  
27    all of the study overstated the price paid by BellSouth customers for wireline service, and

1 understated the cost of PCS PrimeCo service when considering all relevant features and  
2 up-front costs.

3

4 **Q. ON WHAT BASIS DID THE FCC REJECT THE EVIDENCE PROVIDED**  
5 **BY BELL SOUTH SUGGESTING THAT AT&T'S DIGITAL ONE RATE PLAN**  
6 **WOULD ACCELERATE SUBSTITUTION OF PCS FOR WIRELINE LOCAL**  
7 **TELEPHONE SERVICE?**

8 A. At paragraph 43 of the Second BellSouth/Louisiana Order the FCC addressed  
9 AT&T's Digital One Rate Plan. The FCC concluded that despite AT&T's advertising  
10 attempts to persuade customers to substitute AT&T's PCS service for BellSouth's  
11 wireline service, that there was not sufficient evidence to show that AT&T's Digital One  
12 Rate Plan would have any significant effect in this regard, and that BellSouth had not  
13 submitted evidence that its local customers were likely to discontinue wireline service  
14 and substitute AT&T's broadband PCS plan. The FCC stated that BellSouth had not  
15 shown that its wireline customers, particularly residential customers, were at all likely to  
16 switch to this service given the rate structure involved in the study.

17

18 **Q. IN WHAT WAY IS CRICKET PCS BROADBAND SERVICE DIFFERENT**  
19 **FROM QWEST LANDLINE SERVICE?**

20 A. Cricket's wireless service has several significant drawbacks which make it a poor  
21 substitute for Qwest landline service. First of all, it is not possible to access the internet  
22 through the service. Second, the local calling area is limited (see comparison of Qwest  
23 service territories vs cricket service territories in Albuquerque and Santa Fe, Exhibit

1 MSR-Q). Qwest's local calling areas are larger and more extensive than Cricket's.  
2 Cricket's local calling areas generally correspond to Albuquerque and Santa Fe  
3 metropolitan areas. A Cricket customer may make local calls on an unlimited basis  
4 anywhere within Cricket's limited local service territory, but not outside except with the  
5 additional Cricket long distance plan. Also, Cricket service must be pre-paid. Finally,  
6 unlike other Broadband PCS services, Cricket phones will not work outside of Cricket's  
7 limited local service territories and do not allow a user to roam from calling area to  
8 calling area or from state to state. Finally, there is a price difference. Qwest basic  
9 residential service in the Santa Fe and Albuquerque area is \$10.66 plus taxes  
10 (approximately \$20.00) whereas Cricket's basic local service is \$29.95 plus tax.

11

12 **Q. IN WHAT WAY IS CRICKET PCS BROADBAND SERVICE DIFFERENT**  
13 **FROM OTHER BROADBAND PCS SERVICE?**

14 A. There are several noticeable differences. First, the area from which you can call  
15 is much larger, even nationwide, for most broadband PCS services. Second, regular  
16 broadband PCS services offer a large variety of long-distance calling plans, most of  
17 which can be purchased in "blocks" of minutes. The pricing options vary for these  
18 wireless services. Also, the local calling areas are much larger, for instance, on many  
19 cellular plans. An example would be having Albuquerque and Santa Fe are in the same  
20 calling area. With Cricket service, one cannot call between Albuquerque and Santa Fe on  
21 the basic monthly plan. Most broadband PCS services do not require pre-payment for  
22 service. In short, Cricket broadband PCS service is very different than other Broadband

1 PCS services, and should not be considered the same when doing a comparison with  
2 Qwest's wireline service.

3

4 **Q. GIVEN THE FCC'S REJECTION OF THE EVIDENCE PRESENTED IN**  
5 **THE LOUISIANA CASE, WHAT KIND OF INFORMATION MIGHT SHOW**  
6 **THAT BROADBAND PCS WIRELESS IS BEING PURCHASED AS A**  
7 **REPLACEMENT FOR WIRELINE SERVICE?**

8 A. The FCC seems to be primarily concerned with whether or not a BOC can prove  
9 that their wireline customers are purchasing broadband PCS wireless service as a  
10 substitute for their current primary wireline phone service, in lieu of purchasing new  
11 primary wireline service, or in lieu of a secondary wireline for their home. The FCC  
12 would consider studies showing price as a factor for substitution if it strengthens the  
13 premise that BOC wireline customers are indeed switching to Broadband PCS wireless  
14 service as a substitute for wireline service. Also, the FCC would consider Broadband  
15 PCS advertising in its analysis. Again, in paragraph 31 of the FCC's Second  
16 BellSouth/Louisiana Order, the FCC said:

17 Evidence that broadband PCS service constitutes a competitive alternative  
18 could include studies, or other objective analyses, identifying customers  
19 that have replaced their wireline service with broadband PCS service, or  
20 would be willing to consider doing so based on price comparisons.  
21 Evidence of marketing efforts by broadband PCS providers designed to  
22 induce such replacement are also relevant.  
23

24 **Q. HAS QWEST PROVIDED IN ANY WAY IN THIS CASE, A STUDY OR**  
25 **OBJECTIVE ANALYSIS THAT SHOWS THAT QWEST NEW MEXICO**

1    **CUSTOMERS ARE SUBSTITUTING CRICKET WIRELESS SERVICE FOR**  
2    **QWEST WIRELINE SERVICE?**

3    A.     No. No study was provided. What was provided was a variety of piecemeal  
4    evidence thrown together by Qwest which in no way stands up to the level of scrutiny  
5    suggested by the FCC in its Second BellSouth/Louisiana Order.

6

7    **Q.     WHAT IMPORTANCE SHOULD BE GIVEN TO THE ADVERTISING**  
8    **MATERIAL PRESENTED BY QWEST IN ATTACHMENTS B AND J TO MR.**  
9    **BADAL'S AFFIDAVIT, AND EXHIBIT JWB-2 TO MR. BADAL'S PREPARED**  
10   **DIRECT TESTIMONY?**

11   A.     That material has very limited importance. The television ads, website  
12   information, and mailers represented in these attachments do show that Cricket is  
13   advertising their wireless service as a replacement for wireline service. However, it does  
14   not show that Qwest's customers are purchasing Cricket's wireless service in lieu of a  
15   new landline or to replace a current landline. In the Second BellSouth/Louisiana Order,  
16   the FCC acknowledged that AT&T, like Cricket, had advertised their Broadband PCS  
17   wireless product as a substitute for the ILEC's wireline service, but that BellSouth had  
18   failed to prove that any of their wireline customers had actually switched service or  
19   forgone new wireline service for AT&T's wireless plan. In reviewing the evidence  
20   Qwest has provided for Cricket wireless, it is obvious that the same situation also applies  
21   here.

22

1    **Q.     ON PAGE 7 OF MR. BADAL’S AFFIDAVIT, MR. BADAL QUOTES A**  
2    **LEAP WIRELESS SEC FORM 10Q QUARTERLY REPORT, AND ALSO A**  
3    **LEAP WIRELESS PETITION FOR PARTIAL WAIVER OF E911 PHASE II**  
4    **IMPLEMENTATION MILESTONES (FOOTNOTE 7). WHAT IS THE**  
5    **SIGNIFICANCE OF THESE QUOTES?**

6    A.     This material has virtually no significance. The quotes from the SEC report do  
7    not constitute evidence that Cricket wireless is replacing Qwest wireline service in New  
8    Mexico. They are representations that the company has made to both the SEC and the  
9    FCC that their product is intended to offer something that resembles wireline service, but  
10   does not offer proof that their service is being substituted for wireline service.

11

12   **Q.     ON PAGES 7 AND 8 OF THE TESTIMONY OF MR. BADAL, MR.**  
13   **BADAL REFERENCES TWO ALBUQUERQUE JOURNAL ARTICLES IN**  
14   **ATTACHMENTS E AND F AS SHOWING THAT “A SEGMENT OF THE**  
15   **POPULATION VIEWS WIRELESS SERVICE TO BE A VIABLE ALTERNATIVE**  
16   **TO TRADITIONAL LANDLINE SERVICE”. DOES STAFF BELIEVE THIS TO**  
17   **BE TRUE?**

18   A.     Newspaper articles about wireless service are not studies or analyses showing that  
19   Cricket wireless service is actually being substituted for Qwest wireline service. What  
20   they represent are a journalist’s interpretation of what the state of wireless use is. Quite  
21   likely Cricket personnel told the news staff what Cricket hopes will occur in New  
22   Mexico. Attachment E is an article describing an interview with a Cricket’s New Mexico  
23   general manager of operations. The contents of the article were to the reporter by

1 Cricket's manager. The author of the second article (Attachment F) gives her  
2 interpretation of the replacement of wireline phone service by wireless service and other  
3 means. This again is not a study showing that Cricket wireless is a substitute for Qwest  
4 landline phone service in New Mexico. The Commission should evaluate the newspaper  
5 articles for what they are; journalistic interpretations of the effect of wireless service on  
6 wireline usage most of which is based on rosy speculation by Cricket personnel. These  
7 provide no real evidence that Cricket wireless is replacing Qwest wireline service  
8 anywhere in New Mexico at any meaningful level.

9  
10 **Q. IN HIS AFFIDAVIT, MR. BADAL CITES TWO STUDIES, ONE BY THE**  
11 **YANKEE GROUP IN ATTACHMENT G, AND A STUDY BY INTERNATIONAL**  
12 **DATA CORPORATION IN ATTACHMENT H, AND INCLUDES THE IDC**  
13 **STUDY IN ATTACHMENT I. WHAT IS STAFF'S OPINION REGARDING**  
14 **THESE STUDIES WITH REGARD TO WHETHER CRICKET'S WIRELESS**  
15 **SERVICE IS REPLACING QWEST WIRELINE SERVICE IN NEW MEXICO?**

16 A. There are several problems with the notion that the results of these studies can be  
17 effectively transferred to Cricket wireless service in New Mexico. First, these are not  
18 New Mexico studies. Also, Qwest did not supply the Yankee Group Report to the  
19 Commission. It is unknown if the wireless service that is mentioned in the Yankee Group  
20 Report on page 9 of Mr. Badal's testimony is Cricket service. In all likelihood, the  
21 respondents to the survey were users of non-Cricket broadband PCS wireless service,  
22 which is a very different product than Cricket broadband PCS service. Also, the IDC  
23 study, in concluding that over 60% of its subscribers reported using their wireless phones

1 as their primary phones, and 7% reported cutting their landline completely, omitted some  
2 very important information. It does not mention the sample size of the survey for the  
3 Cricket respondents, and most importantly, does not say from what geographic area the  
4 Cricket respondents are from. If they were not exclusively from the Albuquerque and  
5 Santa Fe Cricket service areas, one would have to assume that the Cricket customers that  
6 were polled from other Cricket service areas behave in the same manner as those from  
7 New Mexico. Finally, the actual survey is not supplied to check the methodology or to  
8 check for bias. The survey authors are not available for questions. The maturity of  
9 Cricket's market in different areas is also an issue. Just as customers in different regions  
10 may vary, Cricket service may vary from area to area depending on several factors,  
11 including how long Cricket service has been operational in that area. The Commission  
12 should not accept the findings in either studies as implicit proof that Cricket wireless  
13 service is replacing Qwest wireline service in New Mexico.

14  
15 **Q. ON PAGE 4 OF THE DIRECT TESTIMONY OF JOHN BADAL, HE**  
16 **CITES "PERSONAL KNOWLEDGE" THAT SOME RESIDENTIAL**  
17 **CUSTOMERS ARE SUBSTITUTING CRICKET'S PCS WIRELESS SERVICE**  
18 **FOR QWEST'S TRADITIONAL LANDLINE SERVICE AND REFERENCED**  
19 **EXHIBIT JWB-3 AS EVIDENCE. WHAT IS STAFF'S RESPONSE?**

20 A. Exhibit JWB-3 is the collected affidavits of three Cricket customers with  
21 statements from each of the customers stating why they chose Cricket's wireless service.  
22 Staff seriously doubts the value and extent of Mr. Badal's purported "personal  
23 knowledge". Staff notes that only one of the three Affidavits stated that the Cricket user



1 uses Cricket as a substitute for a Qwest landline. Also, the affidavits of 3 Cricket  
2 customers hardly qualifies as a random sample of any significant size in an unbiased and  
3 statistically sound survey of Cricket customers in New Mexico. Both Mr. Badal's  
4 supposed "personal knowledge" and the three affidavits in Exhibit JWB-3 should be  
5 discounted.

6

7 **Q. HAS QWEST PROVIDED ANY RELIABLE EVIDENCE ABOUT THE**  
8 **NUMBER OF CUSTOMERS CRICKET HAS IN ALBUQUERQUE AND SANTA**  
9 **FE?**

10 A. No. Staff asked that question in discovery request 4-9. Mr. Teitzel responded that  
11 Qwest does not know that information. Instead, Qwest is willing to estimate the number.  
12 However, Staff does not believe Qwest's estimates are accurate or reliable.

13

14 **Q. IS IT POSSIBLE THAT CRICKET'S WIRELESS SERVICE IS BEING**  
15 **USED BY THOSE FORMER QWEST CUSTOMERS NO LONGER QUALIFIED**  
16 **TO RECEIVE SERVICE FROM QWEST DUE TO PRIOR CREDIT OR**  
17 **PAYMENT PROBLEMS?**

18 A. Yes. It would seem that Cricket's basic wireless service would appeal to those  
19 who no longer qualify for Qwest landline service. Cricket does not require a credit  
20 history, and requires pre-payment. In fact, Cricket may be responsible for the rapid loss  
21 of customers by CLECs reselling Qwest's landline service in New Mexico. When one  
22 compares the CLEC residential resale tariffs in **Staff Exhibit MSR-F** and the cost of  
23 Cricket's service, one could understand why one would opt for a limited wireless calling

1 area in lieu of a larger local wireline calling area in the areas where Cricket offers  
2 service. However, like Qwest's assertion that Cricket broadband PCS service is being  
3 subscribed to in lieu of Qwest landline service, it cannot be proven without a formal  
4 study or analysis suitable to FCC standards.

5  
6 **Q. WHAT IS "CHURN" AND WHAT IMPACT DOES IT HAVE ON THE**  
7 **DEVELOPMENT OF CRICKET'S MARKET IN ALBUQUERQUE AND SANTA**  
8 **FE?**

9 A. Churn occurs when local exchange end-users opt to receive service from a certain  
10 provider and then, for one reason or another, changes their mind and switch providers. In  
11 predicting the growth of new Cricket markets, Leap Wireless itself factors in the "churn"  
12 of customers who might opt to receive Cricket service but who then change their minds.  
13 Leap wireless expects "churn" in one-year-old markets (such as Albuquerque and Santa  
14 Fe) to be between 4 and 5%. See [www.leapwireless.com/index.html](http://www.leapwireless.com/index.html), page 8 for  
15 Cricket's third quarter stockholder report, attached as **Exhibit MSR-R**. This is  
16 significant because it means that 4 to 5% of the customers who choose Cricket service in  
17 Cricket's first year of operation in New Mexico can be expected to change their mind  
18 concerning their Cricket service.

19  
20 **Q. WHAT IS STAFF'S CONCLUSION REGARDING THE EVIDENCE**  
21 **PRESENTED BY QWEST ASSERTING THAT CRICKET'S WIRELESS**  
22 **SERVICE IN NEW MEXICO IS BEING SUBSTITUTED FOR QWEST**  
23 **LANDLINE SERVICE?**

1     A.     Staff believes Qwest has failed to prove that Cricket's wireless service is a  
2     substitute for Qwest wireline service in New Mexico for a variety of reasons. First of all,  
3     Qwest's representation that the FCC has accepted wireless service as a substitute for  
4     BellSouth's wireline service is incorrect and misleading; the FCC did NOT consider  
5     BellSouth's evidence adequate in showing that wireless service was a substitute for  
6     wireline service in its order in the Second Louisiana Order. The FCC emphasized that  
7     the BOC must conclusively show that the wireless provider in question is being used as a  
8     substitute for Qwest wireline service **in the state** where 271 approval is being sought.  
9     The BOC must do better than transfer the results of studies done on a nationwide basis or  
10    from other service territories from other states. Qwest has failed to provide any state-  
11    specific study or analysis relating to Cricket's service in New Mexico, and thus fails the  
12    most fundamental requirement that Broadband PCS is being used to replace wireline  
13    service in New Mexico.

14           Also, Cricket's broadband PCS service is fundamentally different from other  
15    forms of broadband PCS wireless service. The results alluded to from any studies  
16    regarding "wireless service" which refers to wireless service other than Cricket service  
17    should be disregarded. It is the equivalent of saying what applies to apples applies to  
18    oranges. Qwest's submission of Cricket's media advertising shows that Cricket has  
19    couched the advertising of its service to say that it may be used in lieu of wireline service,  
20    but it does not prove that Qwest customers are actually using the service in lieu of a  
21    current or secondary landline. Qwest's reference to newspaper articles as "evidence" is  
22    merely journalistic heresay and interpretation of events in the telecommunications world,  
23    and presents no formal evidence to this proceeding. Also, Mr. Badal's submission of the

1 three customer Affidavits as sufficient proof that people are taking Cricket service in lieu  
2 of Qwest wireline residential service should be rejected as inadequate and misleading as  
3 it is not a representative study or sampling of Cricket's customer base. Finally, Qwest  
4 does not know how many customers Cricket has in New Mexico and does not therefore  
5 know how many Cricket customers use their Cricket phone as a substitute for Qwest's  
6 local wireline service. Since Qwest has sorely missed in meeting its burden of proof in  
7 showing that Cricket broadband PCS wireless service serves as a substitute for Qwest  
8 wireline service in New Mexico, no estimates should be included in the totals for  
9 residential customers served by CLECs in New Mexico.

10

11 **Q. ON PAGE 2 OF THE AFFIDAVIT OF MR. BADAL, MR. BADAL**  
12 **SUGGESTS THAT THE DECREASE IN THE NUMBER OF QWEST ACCESS**  
13 **LINES FROM 607,907 IN DECEMBER 2000 TO 604,898 AS OF JULY 31, 2001**  
14 **INDICATES THAT CLECS ARE PROVIDING PRIMARY AND SECONDARY**  
15 **LINES IN COMPETITION TO QWEST LANDLINE SERVICE. IS QWEST'S**  
16 **ARGUMENT CREDIBLE IN THIS REGARD?**

17 A. No, not at all. As the crux for their argument, they cite a 22% increase in the  
18 number of housing permits in Dona Ana and Bernalillo counties from the period covering  
19 September 1999 to August 2000 to the period of September 2000 to August 2001. Mr.  
20 Badal also points to single family housing starts were up 9.2% "through August 2001",  
21 and housing starts in Dona Ana County were up 4.9% "over the same period". The  
22 connection between housing starts and CLEC competition is spurious at best. Staff has  
23 attached **Exhibit MSR-S**, the Profile of General Demographic Characteristics: 2000

1 census data for the year 2000. If one looks at the lower right hand corner under the  
2 category of housing occupancy, one can see that the percentage of housing units vacant at  
3 any one time is 7.6% for that year. The housing vacancy rate is critical because it shows  
4 that, even where new building permits are being issued, there is not necessarily an  
5 increase in population equal to the number of new houses permitted. Also, Qwest has  
6 failed to factor in that many houses permitted during 2001 are not yet complete or  
7 occupied. Obviously, an increase in the number of houses does not result in an increase  
8 in the number of residential local exchange telephone customers until the new houses are  
9 occupied.

10 In reality, there is simply no way to prove how many lines are in every residence,  
11 and how they change as houses are permitted, built, and completed, and people go  
12 through the process of choosing telecommunication services that suit their needs when  
13 they leave certain residences and reoccupy new residencies. Citing housing permit  
14 statistics alone proves nothing. Factors such as housing vacancy rates and time to  
15 completion must be considered.

16

17 **Q. IS THERE ANOTHER FACTOR WHICH MAY ACCOUNT FOR**  
18 **QWEST'S LOSS OF RESIDENTIAL ACCESS LINES?**

19 A. Yes. If the Commission would like a more direct correlation between the choice  
20 of telecommunication services and the loss of residential and business access lines, they  
21 may want to look further at what was mentioned in one of the newspaper articles Mr.  
22 Badal submitted as Attachment F to his Affidavit and as Exhibit JWB-1 to Mr. Badal's  
23 direct testimony. On page 2 of Attachment F, Qwest is quoted as saying that 30 percent

1 of DSL subscribers get rid of their second phone lines after getting high-speed Internet  
2 service. This means that those Qwest residential customers who had a second phone line  
3 prior to subscribing to Qwest's DSL services get rid of their second access line. On the  
4 next page the article states that DSL subscribership in Qwest's 14-state region leaped  
5 105% from 175,000 in June 2000 to 360,000 in the second quarter of this year.

6  
7 **Q. HAS ANY OTHER EVIDENCE SURFACED THAT MAY PROVIDE AN**  
8 **ESTIMATE AS TO THE NUMBER OF SECOND LINES THAT QWEST MAY**  
9 **HAVE LOST DUE TO QWEST'S SALE OF DSL SERVICES TO RESIDENTIAL**  
10 **CUSTOMERS IN NEW MEXICO?**

11 A. Yes. In response to AT&T's discovery request AT&T 1-21 (mistakenly marked  
12 as AT&T discovery request 1-20), Qwest provided through a FDM Report the number of  
13 residential customers who have subscribed to Qwest's Megabit family of services in New  
14 Mexico for each month from December, 2000 to October, 2001. Again, Qwest's claims  
15 its' residential access line base was reduced from 607,907 access lines to 604,898 access  
16 lines from the period of December, 2000 to July 31, 2001, a loss of 3,009 access lines.

17 **Confidential Staff Exhibit MSR-T. \*\*\*\*\*Confidential [xxxxxxxxxxxxxxxxxxxxx**  
18 **xx**  
19 **xx**  
20 **xx**  
21 **xx**  
22 **xx**  
23 **xx**

1 XX  
2 XX  
3 XX  
4 XX  
5 XX  
6 XX  
7 XX  
8 XXXXXXXXXXXXXXXXXXXXXXXXXXXXX]\*\*\*\*\*End Confidential

9

10 Q. WHAT IS THE INCENTIVE FOR A DSL SUBSCRIBER TO GIVE UP A  
11 SECOND LINE ONCE THEY RECEIVE DSL SERVICE?

12 A. Once DSL service is installed on a loop, voice telephone service can be accessed  
13 over same loop that is used to provided the DSL service. DSL service accesses the data  
14 portion of a customer's loop, leaving voice service to be provided over the voice portion  
15 of the customer's loop. If one is using the internet with a standard 56 kbps modem, both  
16 the voice and data portions of the loop are used for the transfer of data to the internet.  
17 Therefore, if one has DSL, one can surf the net or e-mail and still use their telephone for  
18 voice service. Therefore, it is not surprising that 30% of Qwest's customers would divest  
19 themselves of a second line upon purchasing DSL. This could and probably does account  
20 for Qwest's claimed loss of access lines.

21

22

1 Q. WHAT IS STAFF'S RECOMMENDATION TO THE COMMISSION  
2 GIVEN STAFF'S REVIEW OF QWEST'S PRESENTATION OF NEW TRACK A  
3 EVIDENCE IN THE AFFIDAVIT OF JOHN BADAL FILED BY QWEST ON  
4 OCTOBER 5, 2001 AND THE DIRECT TESTIMONY OF JOHN BADAL AND  
5 THE SUPPLEMENTAL TESTIMONY OF DAVID TEITZEL, FILED BY QWEST  
6 ON NOVEMBER 16, 2001?

7 A. Staff recommends the Commission find the new evidence presented by Qwest as  
8 insufficient to show that Qwest has met its Track A requirements for purposes of 271 in  
9 New Mexico. Qwest has failed on all counts. Staff has conclusively shown that the  
10 Intrado database, on which Qwest has relied to show that both residential and business  
11 customers are being served by facilities-based CLECs, is hopelessly inaccurate and  
12 should be disregarded. Staff managed through discovery to find out that the two CLECs  
13 which Qwest claims serve residential customers through facilities-based service actually  
14 serve none. The actual number of residential customers being served by resellers in New  
15 Mexico is de minimus and is rapidly declining. The residential resellers that are doing  
16 business in New Mexico are not selling to current Qwest customers, but appeal , in large  
17 part, to those customers that Qwest has disconnected due to credit or financial problems.  
18 Also, Qwest has not shown through any analysis or study that Cricket's broadband PCS  
19 service is being used as a substitute for Qwest wireline service in New Mexico. Most  
20 importantly, Qwest has failed to show that there are ANY facilities-based CLECs  
21 providing ANY competitive services to ANY residential customers by ANY means in  
22 New Mexico. On the contrary, they have managed to prove through the intervenor's  
23 discovery requests that the opposite is true. As one can see from the CLEC responses to



1 the Commission's Track A Survey, Qwest has failed to assess with any degree of  
2 accuracy the amount of business or residential competition from any CLEC doing  
3 business (or not doing business) in New Mexico irrespective of whether the service is  
4 provisioned through facilities-based, resale, or wireless service. Staff recommends the  
5 Commission rely on that information which has been provided by the CLECs to the  
6 Commission in the Commission's Track A Survey and in this testimony and the attached  
7 exhibits.

8

9 **Q. DO YOU HAVE ANYTHING ELSE TO ADD IN YOUR TESTIMONY?**

10 A. No. This concludes my testimony.

Case Experience of Michael S. Ripperger  
NMPRC Utility Economist

NMPRC Case Number	Company	Type of Filing
2859	Jemez Mountains Electric Cooperative	Financing
2832	Picacho Hills Utility Company	Rate Design and Cost of Capital
2881	Jemez Mountains Electric Cooperative	FPPCAC Continuance
3121	Jemez Mountains Electric Cooperative	Financing
3130	Northern Rio Arriba Electric Cooperative	Financing
2922	US WEST	ISDN
3103	Texas New Mexico Power Company	Securities Approval and Financing - Reorganization
3008	US WEST	Rate Case-Data Service Investments
3358	Valor	AFOR Stipulation
3398	Roosevelt County Electric Cooperative	Financing
3170	El Paso Electric Company	Transition Plan Securities Approval
3436	Roosevelt County Electric Cooperative	Financing
3506	El Paso Electric Company	Formation of Subdiary ESCO
3571	Valle Vista Water and Sewer Company	Sale and Abandonment
3170	El Paso Electric Company	Formation of Holding Company - Securities Approval
3577	Melody Ranch Water Company	Sale and Abandonment
3637	Roosevelt County Electric Cooperative	Financing
3662	Lea County Electric Cooperative	Financing
3682	Northern Rio Arriba Electric Cooperative	Financing
3701	El Paso Electric Company	Financing

IN THE MATTER OF QWEST CORPORATION'S )  
SECTION 271 APPLICATION AND MOTION FOR )  
ALTERNATIVE PROCEDURE TO MANAGE ) Utility Case No. 3269  
THE SECTION 271 PROCESS )  
\_\_\_\_\_ )

STATE OF NEW MEXICO )  
 )ss.  
COUNTY OF SANTA FE )

Michael S. Ripberger  
MICHAEL S. RIPPERGER  
12/31/01  
Date

Barbara S. Mastey  
Notary Public

My Commission Expires: 4-17-2002

New Mexico  
Utility Case No. 3269  
AT&T 01-013

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 013

Please provide the number of residential access lines served by CLECs in New Mexico via resale of Qwest's residential local exchange service for each month of the year 2001, to present.

RESPONSE:

See Attachment A for a monthly report of resold residential access lines in service in New Mexico from January 2001 through October 2001.

Respondent: David Teitzel, Senior Staff Advocate, Policy & Law

**Exhibit MSR-A**

Response to  
Docket No. 3269  
Request ATT 01-013  
**Resold residential access lines  
in service in New Mexico.**

<b>Date</b>	<b>Quantity</b>
January-01	2,788
February-01	2,854
March-01	3,045
April-01	3,064
May-01	2,769
June-01	2,283
July-01	2,108
August-01	1,872
September-01	1,829
October-01	1,658

**Exhibit MSR-A**



P.O. Box 570159

Dallas, Texas 75357-9900 • 800-936-5223

2909 Buckner Blvd.,  
Suite 800  
Dallas, Texas 75228

November 26, 2001

New Mexico Public Regulation Commission  
Attn: Melanie Sandoval  
224 East Palace Ave.  
Legal-Utility Division  
Santa Fe, NM 87501

RECEIVED  
NOV 27 3 12 PM '01  
NM PUBLIC  
REGULATION  
COMMISSION

Dear Ms. Sandoval:

Please find enclosed Comm South Companies, Inc. response to Utility Case No. 3269 as required by the New Mexico Public Regulation Commission. If there is anything further that is required, please don't hesitate to contact me.

Sincerely,

Sheri Pringle  
Regulatory Compliance Manager  
Comm South Companies, Inc.  
972-643-8575  
[springle@commsouth.net](mailto:springle@commsouth.net)

Enclosure

**Exhibit MSR-B**

IN THE MATTER OF QWEST )  
CORPORATION'S SECTION 271 )  
APPLICATION AND MOTION FOR )  
ALTERNATIVE PROCEDURE TO )  
MANAGE THE SECTION 271 PROCESS )

Utility Case No. 3269

NEW MEXICO  
PUBLIC  
REGULATION  
COMMISSION

NOV 27 3 12 PM '01

RECEIVED

**COMM SOUTH COMPANIES, INC. RESPONSE TO**  
**"TRACK A" LOCAL EXCHANGE SERVICE SURVEY**

**A. Residential Local Exchange Service**

1. Please identify the number of residential access lines you serve via facilities-based competition within Qwest's service territory in the state of New Mexico, excluding for this question any access lines provided via UNEs, UNE-P, and/or UNE Combinations.

Zero (0). Comm South Companies, Inc. is a non-facilities based telecommunications service provider.

2. Please identify the number of residential access lines you serve via UNEs, UNE-P, and/or UNE Combinations within Qwest's service territory in the state of New Mexico.

Zero (0). Comm South Companies, Inc. is a non-facilities based telecommunications service provider.

3. Please identify the number of residential access lines you serve via resale within Qwest's service territory in the state of New Mexico.

At 11/15/01 the number of access lines for Comm South was 1,369.

4. Please identify the number of residential local exchange customers you serve via facilities-based competition within Qwest's service territory in the state of New Mexico, excluding for this question any customers that you serve 100% via UNEs, UNE-P, and/or UNE Combinations.

Zero (0). Comm South Companies, Inc. is a non-facilities based telecommunications service provider.

5. Please identify the number of residential local exchange customers you serve via UNEs, UNE-P, and/or UNE Combinations within Qwest's service territory in the state of New Mexico.

Zero (0). Comm South Companies, Inc. is a non-facilities based telecommunications provider.

6. Please identify the number of residential local exchange customers you serve via resale within Qwest's territory in the state of New Mexico.

At 11/15/01 the number of access lines for Comm South was 1,369.

**B. Residential Local Exchange Service**

7. Please identify the number of business access lines you serve via facilities-based competition within Qwest's service territory in the state of New Mexico, excluding for this question any access lines provided via UNEs, UNE-P, and/or UNE Combinations.

Zero (0). Comm South Companies, Inc. is a reseller of residential local telecommunications service only.

8. Please identify the number of business access lines you serve via UNEs, UNE-P, and/or UNE Combinations within Qwest's service territory in the state of New Mexico.

Zero (0). Comm South Companies, Inc. is a reseller of residential local telecommunications service only.

9. Please identify the number of business access lines you serve via resale within Qwest's service territory in the state of New Mexico.

Zero (0). Comm South Companies, Inc. is a reseller of residential local telecommunications service only.

10. Please identify the number of business local exchange customers you serve via facilities-based competition within Qwest's service territory in the state of New Mexico, excluding for this question any customers that you serve 100% via UNEs, UNE-P, and/or UNE Combinations.

Zero (0). Comm South Companies, Inc. is a reseller of residential local telecommunications service only.

11. Please identify the number of business local exchange customers you serve via UNEs, UNE-P, and/or UNE Combinations within Qwest's service territory in the state of New Mexico.

Zero (0). Comm South Companies, Inc. is a reseller of residential local telecommunications service only.



12. Please identify the number of business local exchange customers you serve via resale within Qwest's service territory in the state of New Mexico.

Zero (0). Comm South Companies, Inc. is a reseller of residential local telecommunications service only.

**EXHIBIT MSR - C IS CONFIDENTIAL AND SUBJECT TO THE TERMS  
OF THE PROTECTIVE ORDER ENTERED IN THIS CASE. IT HAS BEEN  
FILED UNDER SEAL AND CAN BE REVIEWED BY THOSE WHO HAVE  
EXECUTED NON-DISCLOSURE AGREEMENTS IN ACCORDANCE WITH  
THE PROTECTIVE ORDER.**

SUBSCRIBER AND ACCESS LINE DATA  
FOR THE YEAR ENDED DECEMBER 31, 2000  
NEW MEXICO TOTAL STATE

RESIDENCE							BUSINESS						GRAND TOTAL
OFFICE NAME (Abr.)	1 PARTY (a)	2 PARTY (b)	4 PARTY (c)	8 PARTY (d)	OTHER (e)	TOTAL (f)	1 PARTY (a)	2 PARTY (b)	4 PARTY (c)	8 PARTY (d)	OTHER (e)	TOTAL (f)	
	This detailed information is proprietary												
TOTAL	610,190	484	221	-	-	610,895	148,618	13	5	-	125,771	272,407	883,3
ITEM	NUMBER				NO. OWNED BY			BILLED ACCESS MINUTES					
	BUSINESS (a)	RESIDENCE (b)	PUBLIC (c)	TOTAL (d)	TELCO (a)	SUB (b)	TOTAL (c)		ORIGINATING	TERMINATING			
3. Total Subscribers	NOT AVAILABLE							17. Interstate Inter-LATA #	1,879,686,270	1,458,185,2			
4. Total Access Lines	262,849	610,895	9,558	683,302				18. Interstate Intra-LATA	NOT AVAILABLE				
5. Access Lines Connected (During Period)	NOT AVAILABLE							19. Intrastate Inter-LATA	NOT AVAILABLE				
6. Access Lines Disconnected (During Period)	NOT AVAILABLE							20. Intrastate Intra-LATA ##	288,668,699	243,791,0			
7. Held Applications (End of Period) **	8	58	0	66									
8. Mobile Radio Telephones in Service	NO LONGER OFFERED												
9. Paging Units in Service	NO LONGER OFFERED												
10. Pay Stations (Public Lines Incl. in Line 4)	0	0	9,488	9,488				HEADCOUNT					
11. Service Stations (Incl. in Line 4)	4	31	0	35				21. No. Network Employees	1,047				
12. Official Stations (Incl. in Line 4)	13,865	197	92	14,154				22. No. Other Employees	463				
13. PBX Systems	NO LONGER OFFERED							23. Total Employees	1,510				
14. PBX Trunks													
15. Key Systems	NO LONGER OFFERED												
16. Key Lines	NO LONGER OFFERED												

\*\* Applications for Primary Service Held for More than 30 Days.  
(Number Reported Utilizes Database Required to Capture Held Applications as Defined by the Commission  
in Docket No. 94-192-TC.)

# Includes All Interstate LATA Minutes.

## Includes All Intrastate LATA Minutes.

**EXHIBIT MSR — 6 IS HIGHLY CONFIDENTIAL AND SUBJECT TO  
THE TERMS OF THE SUPPLEMENTAL PROTECTIVE ORDER ENTERED IN  
THIS CASE. IT HAS BEEN FILED UNDER SEAL AND CAN BE REVIEWED  
BY THOSE WHO HAVE EXECUTED NON-DISCLOSURE AGREEMENTS IN  
ACCORDANCE WITH THE SUPPLEMENTAL PROTECTIVE ORDER.**

**Residential Reseller Information by Tariff in New Mexico**

Company Name	NM Tariff	Type	Qwest Flat Rate	CLEC Rate	Long Distance Available	Prepay	Payment Method	Late Payment Policy	Comments
CommSouth	yes	Residential		41.99	no	yes	Credit card, authorized payment agent, or check	Delinquent at 20 days late	
DMJ Communications	yes	Residential		49	no	yes	No checks, by authorized agent, by mail, or by credit card in person with ID	Disconnect at 10 days late	
HPC Prime, Inc.	no	Residential		N/A	N/A	N/A	N/A	N/A	
Local Telecom Svc.	yes	Residential		49.95	no	yes	Credit card, authorized payment agent, or check	Disconnect at 5 days late	
McLeod USA (Local)	yes	Business		N/A	N/A	N/A	N/A	N/A	Business Tariff Only
Premier Communication Group	yes	Residential		9.93-10.66	yes	no	Cash, check, money order or cashier's check	Disconnect after 15 days	
Servisense.Com Inc.	yes	Residential		not in tariff	yes	no	not specified	Disconnect after 30 days	
Sterling International dba Reconnex	yes	Residential		44.99	no	yes	not specified	Disconnect after 10 days	
Telephone Services Inc. (Wireless Plus Inc.)	yes	Residential		49.95	prepaid	yes	Credit card, authorized payment agent, or check	Disconnect at 5 days late	

EXHIBIT MSR - G IS CONFIDENTIAL AND SUBJECT TO THE TERMS OF THE PROTECTIVE ORDER ENTERED IN THIS CASE. IT HAS BEEN FILED UNDER SEAL AND CAN BE REVIEWED BY THOSE WHO HAVE EXECUTED NON-DISCLOSURE AGREEMENTS IN ACCORDANCE WITH THE PROTECTIVE ORDER.

INTERVENOR: New Mexico State Corporation Commission Staff

REQUEST NO: 001

In reference to Confidential Exhibit A to Qwest's responses to the AG's Requests, Page 2 of Exhibit A shows a Request by Qwest (Request TSS-01-54) dated July 31, 2001, showing the Scope of Work (SOW) required to generate a new report listing each Telco, operating in Qwest's territory, by name along with TN counts by Class of Service. 1.0 of the document states that a new report called the "Ad Hoc to Co-Carrier Report" ("Ad Hoc Report") to be created as needed on a monthly basis on Qwest's requests, as an addendum to the current Co-Carrier metrics report. Please provide the answers to the following questions or produce the following request for documents:

- 1) Please provide a copy of the Co-Carrier metrics report to which the Ad Hoc Report is attached to.
- 2) Please describe the purpose of the Co-Carrier metrics report, and what it reports to Qwest.
- 3) Please provide copies of any reports or other information provided by CLECs to Intrado used to create the Co-Carrier metrics report mentioned on page 2 of Exhibit A.
- 4) How often does Qwest receive the Co-Carrier metrics report from Intrado?
- 5) Will Qwest receive the Co-Carrier metrics report from Qwest and more or less frequently from Qwest due to Qwest's request for the newly attached Ad Hoc Report, and will it coincide with the delivery of the Ad Hoc Report to Qwest?
- 6) Please provide copies of any reports or other information provided by CLECs to Intrado used to create the Ad Hoc Report mentioned on page 2 of Exhibit A.
- 7) What does Qwest pay Intrado for the Co-Carrier metrics report?
- 8) In reference to 1.2 (Testing) of page 2 of Exhibit A, a reference is made to Intrado's "ILEC Research Services Group". What is the purpose of this group? Why are they providing pre-release testing with regards to the creation of the Ad Hoc Report? What is pre-release testing and why is it necessary regarding the Ad Hoc Report?

RESPONSE:

- 1) Qwest objects to this Request because it is overly broad; seeks

**Exhibit MSR-H**

information that is highly confidential, proprietary and competitively sensitive, and asks Qwest to violate the confidentiality rights of third parties. Qwest also objects to this Request because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiving them, Qwest states:

The Co-Carrier Metrics report is compiled by Intrado at the request of Qwest to empirically demonstrate parity of E911 database administration for all carriers providing E911 information to Intrado. It is a report Intrado provides to Qwest for the traditional 14 U S WEST states to demonstrate parity in Intrado's processing of E911 information. The Co-Carrier Metrics report has no relation to the validity of the records in Intrado's New Mexico E911 database, and reflects only information self-reported by the carriers. Mr. Badal did not rely on or even have access to the information in the Co-Carrier Metrics report in preparing his affidavit or direct testimony.

2) See subpart (1) above.

3) Qwest objects to this Request because it seeks information, the release of which would violate the confidentiality rights of third parties. Qwest also objects to this Request because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence for the reasons explained in subpart (1). Moreover, Qwest does not have access to this information, except as specified in Qwest's response to 7, subpart (4) following. Subject to and without waiving the objection, Qwest states: CLECs provide Intrado with customer record information through the service order process. This information flows directly to Intrado, and Qwest does not receive this information.

4) Qwest objects to this Request because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence for the reasons explained in subpart (1). Subject to and without waiving this objection, Qwest states: Qwest receives the Co-Carrier Metrics report from Intrado on the 10th of each month.

5) Qwest objects to this Request because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence for the reasons explained in subpart (1). Subject to and without waiving this objection, Qwest states: The Ad Hoc report has no bearing on the delivery date of the Co-Carrier Metrics report. Both reports are now delivered by Intrado to Qwest on the 10th of each month.

6) Qwest objects to this Request because it seeks information, the release of which would violate the confidentiality rights of third parties. Qwest also objects to this Request because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence for the reasons explained in subpart (1). Moreover, Qwest does not have access to this information, except as specified in Qwest's response to 7, subpart (4) following. Subject to and without waiving the objections, Qwest states: CLECs provide customer record information directly to Intrado through the service order process, and Qwest does not receive this information.

7) Qwest objects to this Request because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is highly confidential, proprietary and competitively sensitive. The Co-Carrier Metrics report is irrelevant to these proceedings for all the reasons explained in subpart (1). The amount Qwest pays for that report is doubly irrelevant. Mr. Badal did not rely on information about the cost of the report in preparing his

## **Exhibit MSR-H**



INTERVENOR: New Mexico Public Regulation Commission (Staff)

REQUEST NO: 3-1-8

Please provide all forms, documentation, and reports that support the conclusion on page 4 of Qwest's Motions that there are 4,796 residential and 19,144 business customers being served by CLECs through wireline

RESPONSE:

Qwest objects to this Request because it seeks third party CLEC confidential information that is highly confidential, proprietary, and competitively sensitive; Qwest has sent a notice letter to the CLECs in the E911 database to notify them of the request for the information and to give them an opportunity to object or present concerns to the Commission. Notwithstanding and without waiving the objections, Qwest states:

This information was supplied by Intrado to Qwest in response to Qwest's request for a customized report detailing the number of CLEC E911 records in service in Qwest's service territory for September 2001, broken down into residential and business class of service categories. The Intrado database contains E911 records for Qwest, Independent LECs and CLECs. E911 records designated as "served by Qwest" include: 1) Qwest's own retail services, 2) services resold by Qwest to CLECs and 3) services provided by Qwest to CLECs on a UNE-Platform basis. These three types of E911 records (which all represent services provided directly from Qwest's switches), as well as E911 records associated with Independent LECs in New Mexico, are excluded from the CLEC E911 record counts reflected in Mr. Badal's affidavit and in Qwest's response to Staff Request MFG 3-1-1. The CLEC E911 records reported in Mr. Badal's affidavit only include records associated with CLECs providing local exchange service via facilities owned by the CLECs or via stand-alone UNE loops purchased by the CLECs from Qwest.

Respondent: David Teitzel

**Exhibit MSR-I**

INTERVENOR: New Mexico State Corporation Commission Staff

REQUEST NO: 006

In Attachment E to Qwest's response to ATG 01-001, page 2 of that letter from Connie Chapman to Eric Olson, at the end of the second paragraph, in reference to the Ad Hoc Report, Ms. Chapman that in the report there were "11 classes of service".

- 1) Do these are these "classes of service" the same as the class of service category in Exhibit B to ATG 01-001?
- 2) If the classes of service referenced on page 2 of Attachment E are the same as the class of service in Exhibit B to ATG 01-001, please list all 11 classes of service referenced.
- 3) For each class of service listed in 30) above, please provide a precise description of each class of service, and how a customer is categorized into each class of service.
- 4) Of the customer classes described in file TNCensus.xls, which are used to describe residential facilities-based service?
- 5) Of the customer classes described in file TNCensus.xls, which are used to describe residential wireline service provided through stand-alone UNE loops purchased from Qwest?
- 6) Of the customer classes described in TNCensus.xls, which are used to describe residential wireline service provided through resale from Qwest?
- 7) Of the customer classes described in file TNCensus.xls, which are used to describe business facilities-based service?
- 8) Of the customer classes described in file TNCensus.xls, which are used to describe business wireline service provided through stand-alone UNE loops purchased from Qwest?
- 9) Of the customer classes described in file TNCensus.xls, which are used to describe business wireline service provided through resale from Qwest?
- 10) For each category of customer described in questions 32 -27) above, please provide the numbers of each specific category in file TNCensus.xls of Exhibit E of ATG NM-01-01.

RESPONSE:

**Exhibit MSR-J**

- 1) See response to Request 5(2) above. The referenced attachment is strictly illustrative and was not intended to reflect all service classes.
- 2) The eleven classes of service are: Residence, Business, Residence PBX, Business PBX, Centrex, Coin 1 way out, Coin 2 way, wireless, residence OPX (off premise extension), business OPX, and customer owned coin telephone.
- 3) Each class of service is self-explanatory. Customers are categorized into a specific class of service based upon the type of service purchased. For example, a customer subscribing to flat or measured residential access lines would be categorized under the "Residence" class of service.
- 4) The CLEC E911 records in the Ad Hoc Report classified as "Residential" correspond to facilities-based access lines, although those records do not capture all CLEC facilities-based residential competition in New Mexico. Residential E911 records exist in the CLEC's name only for access lines that the CLEC serves entirely via its own facilities (i.e., through full facilities bypass) or via unbundled loops leased from Qwest that are then connected to the CLEC's network. Access lines that CLECs serve using platforms of UNEs leased from Qwest are in fact "facilities based" for purposes of the FCC's Track A orders; however, these lines appear in the E911 database under Qwest's name, not the CLEC's. The E911 records shown in the Ad Hoc report also do not include access lines served by independent telephone companies or wireless carriers (both of which may provide facilities-based competition to Qwest's residential services), nor do they include CLEC lines served through resale.
- 5) Unknown. Qwest has no way to determine which CLEC E911 records correspond to stand-alone UNE loops as opposed to full facilities bypass.
- 6) None. See subpart (4) above.
- 7) Qwest objects to this Request because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as a matter of law. The Commission has limited the scope of this evidentiary proceeding to "(i) examining the information contained in the Affidavit of John W. Badal that purports to 'document certain updated and additional information...regarding the extent to which local exchange service is provided to residential customers in New Mexico by carriers competing with Qwest', and (ii) examining Qwest's evidence regarding the nature and extent of the provision of residential local exchange service through resale." See Procedural Order Regarding Track A at 7 quoting Affidavit of John W. Badal at 1. Subject and without waiving this objection, Qwest states: The classes of service "Business", "Business PBX" and "Centrex" identified in file TNCensus.xls referenced in Qwest's response to ATG 01-001 are all associated with business facilities-based service, as defined in subpart (4) above.
- 8) Qwest objects to this Request because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as a matter of law. The Commission has limited the scope of this evidentiary proceeding to "(i) examining the information contained in the Affidavit of John W. Badal that purports to 'document certain updated and additional information...regarding the extent to which local exchange service is provided to residential customers in New Mexico by carriers competing with Qwest', and (ii) examining Qwest's evidence regarding the nature and extent of the provision of residential local exchange service through resale." See Procedural Order Regarding Track A at 7 quoting Affidavit of John W. Badal at 1. Subject and without waiving this objection, Qwest states: Unknown. See subpart (5) above.

## Exhibit MSR-J

**EXHIBIT MSR - K IS HIGHLY CONFIDENTIAL AND SUBJECT TO  
THE TERMS OF THE SUPPLEMENTAL PROTECTIVE ORDER ENTERED IN  
THIS CASE. IT HAS BEEN FILED UNDER SEAL AND CAN BE REVIEWED  
BY THOSE WHO HAVE EXECUTED NON-DISCLOSURE AGREEMENTS IN  
ACCORDANCE WITH THE SUPPLEMENTAL PROTECTIVE ORDER.**

**EXHIBIT MSR - L IS HIGHLY CONFIDENTIAL AND SUBJECT TO  
THE TERMS OF THE SUPPLEMENTAL PROTECTIVE ORDER ENTERED IN  
THIS CASE. IT HAS BEEN FILED UNDER SEAL AND CAN BE REVIEWED  
BY THOSE WHO HAVE EXECUTED NON-DISCLOSURE AGREEMENTS IN  
ACCORDANCE WITH THE SUPPLEMENTAL PROTECTIVE ORDER.**

INTERVENOR: New Mexico Public Regulation Commission (Staff)

REQUEST NO: 005

Referring to the Affidavit of John Badal filed October 5, 2001 and specifically to page 4 where Mr. Badal cites the September 28, 2001 Intrado report in estimating the telephone number in service counts for CLECs in the residential and business categories, provide the following information:

- A. What is the telephone number in service count for Qwest in the residential category in the same Intrado Report or in any other report or data compiled by Intrado and provided to Qwest?
- B. Produce any documents or other information showing what Intrado's telephone number in service count for Qwest in the residential category is.
- C. What is the telephone number in service count for Qwest in the business category in the same Intrado Report or in any other report or data compiled by Intrado and provided to Qwest?
- D. Produce any documents or other information showing what Intrado's telephone number in service count for Qwest in the business category is.
- E. Fully describe exactly what is meant by telephone number "in service" counts, specifically addressing how telephone number in service counts compare to or differ from customer access line counts.
- F. Describe all steps taken by the witness to determine or examine CLEC practices for self-reporting telephone number in service counts.
- G. Produce all documents, data or other materials used by the witness or others assisting the witness to determine or examine CLEC practices for self-reporting to telephone number in service counts.
- H. Describe and produce any and all documents, records and data reviewed by Mr. Badal or others assisting Mr. Badal prior to Mr. Badal making the statements found at page 4 of his affidavit.
- I. Did Mr. Badal read the September 28, 2001 Intrado Report in full prior to filing his October 5 Affidavit?
- J. Did Mr. Badal rely solely on his own understanding and interpretation of the September 28, 2001 Intrado Report in connection with his preparation of his October 5, 2001 affidavit?
- K. Did Mr. Badal rely on others to interpret the contents of the September 28, 2001 Intrado Report in connection with his preparation of his October 5, 2001 affidavit and, if so, identify who Mr. Badal relied on.
- L. Describe CLEC practices for self-reporting Direct Inward Dialing ("DID") numbers or any other numbers assigned to customers in blocks.
- M. When CLECs self-report telephone number in service counts, as described by Mr. Badal at page 4 of his affidavit, do they include all individual numbers that are assigned in blocks, such as DID numbers?
- N. How do CLECs self report telephone numbers where the CLEC provides the switch and Qwest is the underlying provider of the access line facility

**Exhibit MSR-M**

connecting the customer's premises with the CLEC switch?

O. Does the Intrado Report include any telephone numbers reported by rural telephone cooperative, neighboring ILECs, or other independent telephone companies?

P. Describe any and all steps taken by the witness to verify that the telephone number in service counts for CLECs in the residential and business categories that he derived from the September 28, 2001 Intrado Report are not overstated.

Q. Did Qwest request or receive the September 28, 2001 Intrado Report referred to in the Affidavit of John Badal for the purpose of providing telecommunications service and, if so, explain how requesting and receiving the September 28, 2001 Intrado Report furthers Qwest's provision of telecommunications service.

R. Identify any and all Qwest personnel who have received or reviewed the September 28, 2001 Intrado Report referred to in the Affidavit of John Badal and include a description of the job duties of each person and whether that person works for a marketing unit of the company and whether that person has marketing responsibilities.

S. Identify any and all Qwest marketing personnel or Qwest personnel that perform marketing activities that are also engaged in Qwest's efforts to secure Section 271 approval.

**RESPONSE:**

A. Qwest objects to this Request because it seeks information that is highly confidential, proprietary, competitively sensitive, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Qwest's telephone number in service count has nothing to do with whether there is facilities-based or resale-based competition in the New Mexico residential local exchange market. Subject to and without waiving this objection, Qwest states: See Confidential Attachment B, which reflects counts of both Residential and Business E911 records in the Intrado database designated as Qwest Communications as of September 30, 2001

B. Qwest objects to this Request because it seeks information that is highly confidential, proprietary, competitively sensitive, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Qwest's telephone number in service count has nothing to do with whether there is facilities-based or resale-based competition in the New Mexico residential local exchange market. Subject to and without waiving these objections, Qwest states: See Confidential Attachment to Qwest's supplemental response to Staff 3-1-1S3.

C. Qwest objects to this Request because it seeks information that is highly confidential, proprietary, competitively sensitive, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Qwest's telephone number in service count has nothing to do with whether there is facilities-based or resale-based competition in the New Mexico residential local exchange market. In addition, Qwest objects to this Request because it seeks information about business customers and the business market. The Commission has limited the scope of this evidentiary proceeding to "(i) examining the information contained in the Affidavit of John W. Badal that purports to 'document certain updated and additional information . . . regarding the extent to which local exchange service is provided to residential customers in New Mexico by carriers competing with Qwest', and (ii) examining Qwest's evidence regarding the nature and extent of the provision of residential local exchange service through resale." See

## **Exhibit MSR-M**

Procedural Order Regarding Track A at 7 quoting Affidavit of John W. Badal at 1. Subject to and without waiving these objections, Qwest states. See Confidential Attachment B, which reflects counts of both Residential and Business E911 records in the Intrado database designated as Qwest Communications as of September 30, 2001.

D. Qwest objects to this Request because it seeks information that is highly confidential, proprietary, competitively sensitive, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Qwest's telephone number in service count has nothing to do with whether there is facilities-based or resale-based competition in the New Mexico residential local exchange market. In addition, Qwest objects to this Request because it seeks information about business customers and the business market. The Commission has limited the scope of this evidentiary proceeding to "(i) examining the information contained in the Affidavit of John W. Badal that purports to 'document certain updated and additional information . . . regarding the extent to which local exchange service is provided to residential customers in New Mexico by carriers competing with Qwest', and (ii) examining Qwest's evidence regarding the nature and extent of the provision of residential local exchange service through resale." See Procedural Order Regarding Track A at 7 quoting Affidavit of John W. Badal at 1. Subject to and without waiving these objections, Qwest states: See Confidential Attachment to Qwest's supplemental response to Staff 3-1-1S3.

E. Relative to E911 data housed in the Intrado database, telephone number "in service" counts has the same meaning as E911 "record" counts. It is important to note that E911 "record" counts will not directly correspond to actual access line in-service counts, since all access lines are not recorded in the E911 database. For example, inward dialing-only lines, such as PBX DID trunks, are not reflected in the E911 database since that line is restricted from making any outbound calls, including calls to 911, and lines used exclusively for data purposes may not appear in E911 records. Because the E911 data excludes these lines, it actually underestimates the number of lines which count as local exchange competition.

F. Mr. Badal has not investigated CLEC self-reporting practices through which the CLECs communicate customer record information to Intrado. In existing interconnection agreements between Qwest and CLECs serving New Mexico, the contract language simply states that it is the CLECs' responsibility to update customer records in the E911 database.

G. See response to subpart F above. In addition, see Qwest response to Staff 3-5, which provides website references to Qwest's SGAT, which specifies that CLECs are responsible for reporting customer information to the E911 administrator, and to the National Emergency Number Association (NENA), which provides independent standards CLECs must follow in reporting information to be used for E911 purposes.

H. See Qwest responses to subparts F and G above, as well as Qwest responses to Staff 3-1.

I. No. Mr. Badal did not have access to the unmasked Intrado report prior to the filing of his affidavit.

J. No. See Response to subpart K below.

K. Qwest objects to this Request to the extent it violates the attorney-client privilege and the attorney work-product doctrine. Subject to and without waiving this objection, Qwest states that: In preparing for his October 5, 2001 affidavit, Mr. Badal relied on his own interpretation of the Intrado Report, and the interpretation of David L. Teitzel, Senior Staff Advocate, Qwest Corporation.

L. See Qwest responses to subparts E (providing Qwest's understanding of

## Exhibit MSR-M



EXHIBIT MSR - N IS HIGHLY CONFIDENTIAL AND SUBJECT TO THE TERMS OF THE SUPPLEMENTAL PROTECTIVE ORDER ENTERED IN THIS CASE. IT HAS BEEN FILED UNDER SEAL AND CAN BE REVIEWED BY THOSE WHO HAVE EXECUTED NON-DISCLOSURE AGREEMENTS IN ACCORDANCE WITH THE SUPPLEMENTAL PROTECTIVE ORDER.

Affidavit of Brian D. Thomas

State of Oregon       )  
                                  ) ss.  
County of Multnomah)

Brian D. Thomas, being duly sworn, deposes and states:

1. I reside in Portland, Oregon and am employed by Time Warner Telecom as Vice President - Regulatory.
2. I am familiar with the Time Warner Telecom's operations in the State of New Mexico.
3. On or about January 10, 2001 Time Warner Telecom purchased the majority of GST Telecom's assets. Although GST formerly provided local service to residential MDU customers in New Mexico, Time Warner Telecom did not acquire that component of GST's New Mexico operations and those residential local customers formerly served by GST were informed that the company would no longer be providing their local service. I understand that most, if not all, of those customers migrated back to Qwest, the incumbent local exchange carrier in New Mexico.
4. Currently, Time Warner Telecom does not provide local service to residential customers in New Mexico.

Further affiant sayeth naught.

B. D. Thomas

Subscribed and sworn to before me by Brian D. Thomas this 7<sup>th</sup> day of September, 2001.

Debbie J. Reed

My commission expires:

3-22-2004

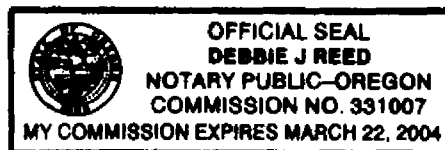


EXHIBIT MSR -P IS HIGHLY CONFIDENTIAL AND SUBJECT TO THE TERMS OF THE SUPPLEMENTAL PROTECTIVE ORDER ENTERED IN THIS CASE. IT HAS BEEN FILED UNDER SEAL AND CAN BE REVIEWED BY THOSE WHO HAVE EXECUTED NON-DISCLOSURE AGREEMENTS IN ACCORDANCE WITH THE SUPPLEMENTAL PROTECTIVE ORDER.

INTERVENOR: New Mexico Public Regulation Commission (Staff)

REQUEST NO: 3-2-3

Where are Cricket's local calling areas in New Mexico and how do Cricket's calling areas in New Mexico compare with Qwest's local calling areas in Albuquerque and Santa Fe, New Mexico? Please provide maps which show the comparison between Qwest's and Cricket's local calling areas in New Mexico.

RESPONSE:

Attachments A-1 and A-2 are maps of Qwest's local service areas in Albuquerque and Santa Fe. Qwest does not know the precise boundaries of Cricket's local calling areas in these cities; however, Qwest has provided as Attachment B a copy of a service area map that appears on Cricket's web site. Qwest objects to the remainder of this Request because it seeks the creation of documents and maps that are not in existence. In addition, this request seeks information that is irrelevant as a matter of law. The FCC has held that it "do[es] not read section 271(c)(1)(A) to require any specified level of geographic penetration by a competing provider." See Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543 ¶ 76 (1997).

Respondent: Michael Horcasitas

**Exhibit MSR-Q**

[illegible]

*ride the light*  
**Qwest**

-  Major Streets and Highways  
 Cities and Towns  
 Wire Centers

## Exhibit MSR-Q

# Qwest Albuquerque Service Area

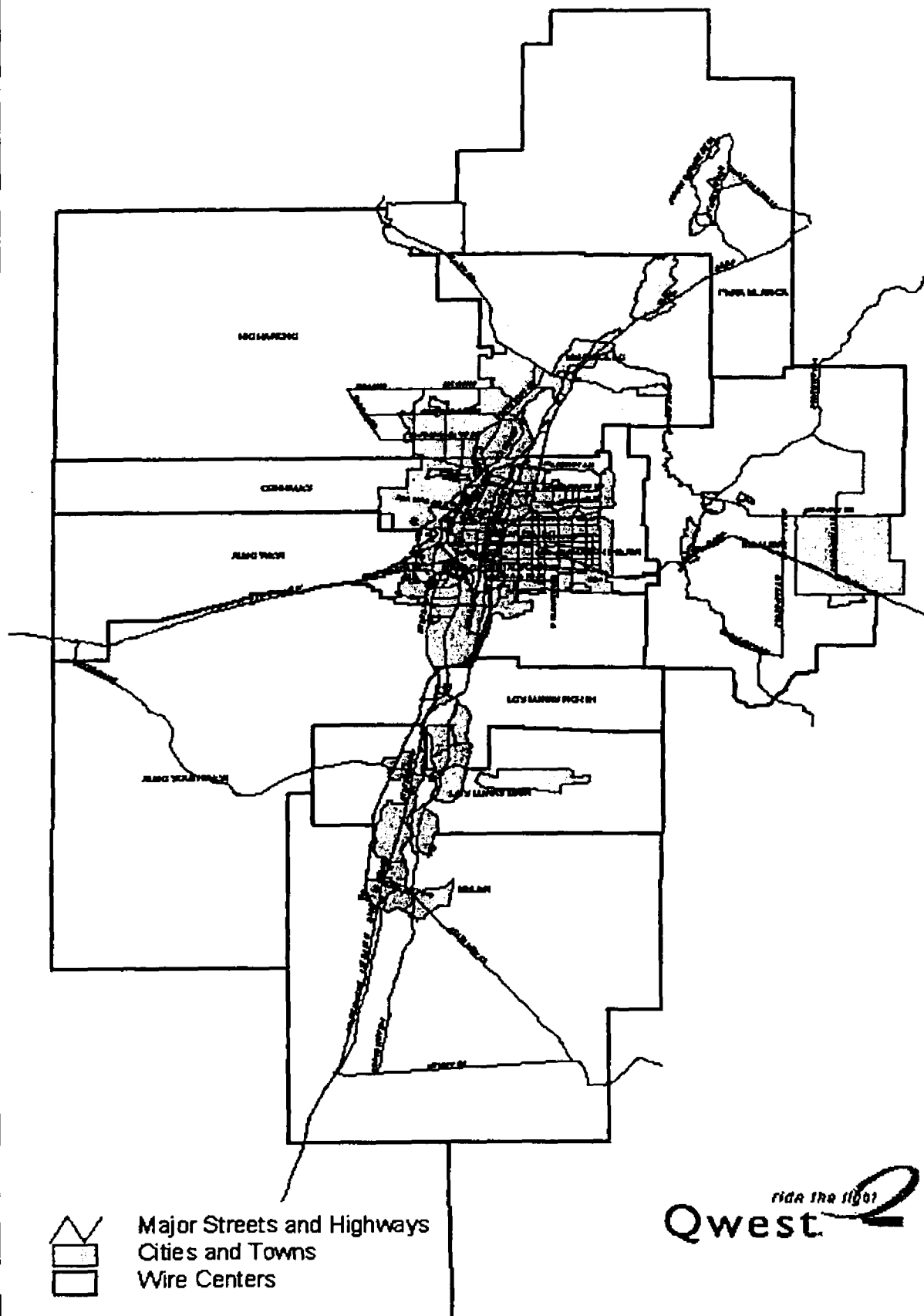


Exhibit MSR-Q





Leap also reaffirmed its previous guidance for the performance of a typical Cricket market on a "same-market-sales" basis as follows:

- Penetration - At the end of the first year of operation, Leap expects a typical Cricket market to have reached approximately six to seven percent penetration of covered POPs. This penetration is expected to increase to nine to 10 percent at the end of the second year of operation and thereafter to increase at a rate of approximately one percent per year with long-term penetration being in the mid to high teens.
- Minutes of Use – Average MOU per user is expected to be approximately 900 to 1,100 minutes per month.
- Churn – Churn in one-year-old markets is expected to be between four to five percent and between three to four percent in two-year-old markets. Churn in markets in their third year of operation is expected to be in line with the industry average.
- Earnings Before Interest, Taxes, Depreciation, Amortization, and Marketing – At the end of the first year of operation, Leap expects the EBITDAM margin of a typical Cricket market to be in the low to mid-20 percent range based on service revenue. This margin is expected to increase to approximately 40 percent at the end of the second year of operation and to the mid-50 percent range long term.
- Earnings Before Interest, Taxes, Depreciation, and Amortization – A typical Cricket market is expected to be at EBITDA break-even based on service revenue after 12 to 15 months of operation. EBITDA margin, based on service revenue, is expected to be approximately 20 percent at the end of the market's second year of operation and in the mid-40 percent range long term.

#### **Conference Call Note**

Leap will hold a conference call to discuss these results at 11:00 a.m. ET, Wednesday, Oct. 24, 2001. Forward looking and other material information may be also be discussed during this call and a live broadcast will be available online at [www.leapwireless.com](http://www.leapwireless.com) or [www.streetevents.com](http://www.streetevents.com) with an online replay following shortly thereafter.

*- more -*

## **Exhibit MSR-R**



Subject	Number	Percent	Subject	Number	Percent
<b>Total population</b> .....	<b>556,678</b>	<b>100.0</b>	<b>HISPANIC OR LATINO AND RACE</b>		
<b>SEX AND AGE</b>			<b>Total population</b> .....	<b>556,678</b>	<b>100.0</b>
Male.....	271,904	48.8	Hispanic or Latino (of any race).....	233,565	42.0
Female.....	284,774	51.2	Mexican.....	88,826	16.0
Under 5 years.....	38,566	6.9	Puerto Rican.....	1,966	0.4
5 to 9 years.....	39,016	7.0	Cuban.....	1,868	0.3
10 to 14 years.....	39,426	7.1	Other Hispanic or Latino.....	140,885	25.3
15 to 19 years.....	40,728	7.3	Not Hispanic or Latino.....	323,113	58.0
20 to 24 years.....	40,828	7.3	White alone.....	268,972	48.3
25 to 34 years.....	79,423	14.3	<b>RELATIONSHIP</b>		
35 to 44 years.....	89,615	16.1	<b>Total population</b> .....	<b>556,678</b>	<b>100.0</b>
45 to 54 years.....	78,174	14.0	In households.....	546,051	98.1
55 to 59 years.....	26,311	4.7	Householder.....	220,936	39.7
60 to 64 years.....	20,435	3.7	Spouse.....	101,523	18.2
65 to 74 years.....	33,904	6.1	Child.....	159,269	28.6
75 to 84 years.....	22,808	4.1	Own child under 18 years.....	124,406	22.3
85 years and over.....	7,444	1.3	Other relatives.....	30,262	5.4
Median age (years).....	35.0	(X)	Under 18 years.....	12,791	2.3
18 years and over.....	415,658	74.7	Nonrelatives.....	34,061	6.1
Male.....	200,222	36.0	Unmarried partner.....	15,134	2.7
Female.....	215,436	38.7	In group quarters.....	10,627	1.9
21 years and over.....	390,335	70.1	Institutionalized population.....	4,401	0.8
62 years and over.....	75,857	13.6	Noninstitutionalized population.....	6,226	1.1
65 years and over.....	64,156	11.5	<b>HOUSEHOLD BY TYPE</b>		
Male.....	26,840	4.8	<b>Total households</b> .....	<b>220,936</b>	<b>100.0</b>
Female.....	37,316	6.7	Family households (families).....	141,237	63.9
<b>RACE</b>			With own children under 18 years.....	69,419	31.4
One race.....	533,198	95.8	Married-couple family.....	101,523	46.0
White.....	393,851	70.8	With own children under 18 years.....	45,545	20.6
Black or African American.....	15,401	2.8	Female householder, no husband present.....	28,393	12.9
American Indian and Alaska Native.....	23,175	4.2	With own children under 18 years.....	17,406	7.9
Asian.....	10,751	1.9	Nonfamily households.....	79,699	36.1
Asian Indian.....	1,504	0.3	Householder living alone.....	62,961	28.5
Chinese.....	2,068	0.4	Householder 65 years and over.....	17,482	7.9
Filipino.....	1,211	0.2	Households with individuals under 18 years.....	76,848	34.8
Japanese.....	961	0.2	Households with individuals 65 years and over.....	45,591	20.6
Korean.....	902	0.2	Average household size.....	2.47	(X)
Vietnamese.....	2,867	0.5	Average family size.....	3.06	(X)
Other Asian <sup>1</sup> .....	1,238	0.2	<b>HOUSING OCCUPANCY</b>		
Native Hawaiian and Other Pacific Islander.....	574	0.1	<b>Total housing units</b> .....	<b>239,074</b>	<b>100.0</b>
Native Hawaiian.....	192	-	Occupied housing units.....	220,936	92.4
Guamanian or Chamorro.....	146	-	Vacant housing units.....	18,138	7.6
Samoan.....	105	-	For seasonal, recreational, or occasional use.....	1,161	0.5
Other Pacific Islander <sup>2</sup> .....	131	-	Homeowner vacancy rate (percent).....	1.8	(X)
Some other race.....	89,446	16.1	Rental vacancy rate (percent).....	11.5	(X)
Two or more races.....	23,480	4.2	<b>HOUSING TENURE</b>		
<b>Race alone or in combination with one or more other races:</b> <sup>3</sup>			<b>Occupied housing units</b> .....	<b>220,936</b>	<b>100.0</b>
White.....	414,052	74.4	Owner-occupied housing units.....	140,634	63.7
Black or African American.....	18,905	3.4	Renter-occupied housing units.....	80,302	36.3
American Indian and Alaska Native.....	28,857	5.2	Average household size of owner-occupied units.....	2.61	(X)
Asian.....	14,076	2.5	Average household size of renter-occupied units.....	2.22	(X)
Native Hawaiian and Other Pacific Islander.....	1,173	0.2			
Some other race.....	104,325	18.7			

- Represents zero or rounds to zero. (X) Not applicable.

<sup>1</sup> Other Asian alone, or two or more Asian categories.<sup>2</sup> Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.<sup>3</sup> In combination with one or more of the other races listed. The six numbers may add to more than the total population and the six percentages may add to more than 100 percent because individuals may report more than one race.

Source: U.S. Census Bureau, Census 2000.

EXHIBIT MSR -T IS CONFIDENTIAL AND SUBJECT TO THE TERMS  
OF THE PROTECTIVE ORDER ENTERED IN THIS CASE. IT HAS BEEN  
FILED UNDER SEAL AND CAN BE REVIEWED BY THOSE WHO HAVE  
EXECUTED NON-DISCLOSURE AGREEMENTS IN ACCORDANCE WITH  
THE PROTECTIVE ORDER.

EXHIBIT MSR -U IS CONFIDENTIAL AND SUBJECT TO THE TERMS OF THE PROTECTIVE ORDER ENTERED IN THIS CASE. IT HAS BEEN FILED UNDER SEAL AND CAN BE REVIEWED BY THOSE WHO HAVE EXECUTED NON-DISCLOSURE AGREEMENTS IN ACCORDANCE WITH THE PROTECTIVE ORDER.

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF QWEST CORPORATION'S )  
SECTION 271 APPLICATION AND MOTION FOR )  
ALTERNATIVE PROCEDURE TO MANAGE ) Utility Case No. 3269  
THE SECTION 271 PROCESS. )  
\_\_\_\_\_)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the public version of  
**Testimony of Michael S. Ripperger in Response to Qwest's New Mexico Specific  
Tract A Evidence**, was mailed First Class, postage prepaid, and electronically  
transmitted to the following on December 31, 2001:

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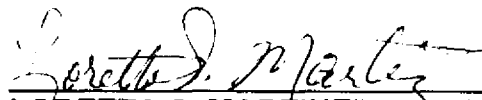
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**DATED this 31st day of December, 2001.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**



**LORETTA S. MARTINEZ, Legal Assistant**

Case No.: 3269

Staff Track A  
Confidential Exhibit 1A

Deemed Confidential  
Subject to protective order  
In case no. 3269

ORIGINAL  
Sealed and filed  
Not to be checked out!!!

Case No.: 3269

Staff Track A  
Highly Confidential Exhibit 1B

Deemed Highly Confidential  
Subject to protective order  
In case no. 3269

ORIGINAL  
Sealed and filed  
Not to be checked out!!!